

## **TERMS AND CONDITIONS**

### **AFTER HOURS COMMUTER PROGRAM DESCRIPTION AND TERM**

The Washington Metropolitan Area Transit Authority (“Metro”) late-night on-demand transit service After-Hours Commuter program. The program may be used to commute to and/or from work between the hours of 12:00 am (midnight) and 4:00 am on Monday to Sunday. Metro has extended the late-night on-demand program from June 30, 2021 to June 30, 2022 beginning on July 1, 2021 at midnight and ending on June 30, 2022 at 11:59 pm.

### **SUBSIDY AMOUNT**

Approved Eligible Riders (defined below) taking Qualified Trips (defined below) will receive a \$6.00 subsidy depending on the total cost of the trip. The subsidy will automatically be deducted from the total cost of a Qualifying Trip at the time of payment to the Participating Carrier. If the total cost of the Qualifying Trip is \$6.00 or more, you will receive the full \$6.00 subsidy and if it is less than \$6.00, you will receive a subsidy only up to the amount of the cost of the trip.

### **QUALIFYING TRIP**

A “Qualifying Trip” is a trip (i) taken by an approved Eligible Rider (ii) that originates and terminates in the Metro service area (please see the program Frequently Asked Questions for a Map of the service area) (iii) during the program Fiscal Year July 1, 2021 – June 30, 2022 (iv) within the hours of 12:00 am (midnight) to 4:00 am and (v) taken with a third-party transportation provider approved by Metro (a “Participating Carrier”). For the sake of clarity, in order to be a Qualifying Trip, the trip must start between 12:00 am (midnight) and 4:00 am. However, if a trip starts at any time between 12:00 am (midnight) and 4:00 am but ends after 4:00 am, it is still considered a Qualifying Trip. Qualifying Trips are only valid for Participating Carrier shared rides. If a shared ride vehicle is not available, regardless of the circumstance, the promotion code will apply to the standard Participating Carrier economy ride.

### **DETERMINATION OF ELIGIBLE RIDERS**

Metro will determine, in its sole discretion, your eligibility for the program. Metro reserves the right, in its sole discretion, to change the eligibility rules at any time and for any reason whatsoever. Metro reserves the right, in its sole discretion, to terminate your eligibility at any time and for any reason whatsoever.

### **ELIGIBILITY CONDITIONS**

To qualify for consideration as an “Eligible Rider” in the program, you must meet all of the following criteria:

1. Be at least 18 years old;
2. Have a valid SmarTrip card;
3. Register your SmarTrip card at <https://www.wmata.com/fares/smartrip/>, even if it is provided to you by your employer;
4. Register your SmarTrip card on the After-Hours Commuter Service website;
5. Provide your work schedule, employer’s name, telephone number, and email;
6. Work within the Metro service area and need transportation service between 12:00 am (midnight) and 4:00 am; and
7. Take trips that originate and terminate within the Metro service area.

By providing information to Metro for eligibility consideration, you are consenting to Metro's use of this information for the purpose of verifying your eligibility to participate in the program as described in these Terms.

#### ELIGIBILITY APPROVALS AND DENIALS

Once you provide the required eligibility information, Metro may verify whether you meet all the eligibility conditions. Metro may verify your information by calling your employer using the telephone number or email address that you provide during registration. Your employer's confirmation of both your work schedule and work address will serve as the basis for verification. Metro may use the information you provide to contact your employer at the time of registration and from time to time for auditing purposes.

Metro will inform you if you have been denied eligibility. If you have been denied eligibility, you may send an email to [AHCS@wmata.com](mailto:AHCS@wmata.com) within 2 business days after receipt of your initial denial email and request that Metro reconfirm your information with your employer.

To begin receiving the subsidy on the 1st day of the month following your registration, you must submit your eligibility information no later than the 25th of the month. If you submit your eligibility information after the 25th of the month, you will not begin receiving the subsidy until the 1st of the second month following registration. Thereafter, Metro will automatically apply the subsidy on the 1st day of each month for the duration of the program or until otherwise terminated.

#### TRIP USAGE RESTRICTIONS

The program will restrict approved Eligible Riders to no more than 40 Qualifying Trips per month. Qualifying Trips are on a "use it or lose it" basis, which means that if you take fewer than 40 trips in a month, the remaining unused trips do not carry over to the next month. You cannot take more than 40 trips in any given month.

#### ABUSE, FRAUD AND AUDIT

You certify that the eligibility information you are providing is true and accurate. Without limiting any other remedies, Metro may suspend or terminate your eligibility in the program if the information you provide is inaccurate, you engage in fraudulent activity in connection with the program, or otherwise attempt to abuse the privileges associated with the program. Metro may, from time to time and in its sole discretion, audit your eligibility information by contacting your employer with the information you provide at registration to confirm its continued accuracy during the program Term.

#### PRIVACY POLICY

Metro's applicable privacy policy is located at <https://www.wmata.com/about/records/privacy.cfm>. A Participating Carrier may have its own privacy policy that will apply to any data you may share when you choose to use their service as part of the program. If you have questions regarding the privacy practices of a Participating Carrier, please review the Participating Carrier's privacy policy. Metro does not accept any responsibility or liability for the privacy practices of a Participating Carrier and your use of their service is at your own risk.

#### PARTICIPATING CARRIER TERMS OF SERVICE

A Participating Carrier may have its own terms of service that will apply to any service it provides to you as part of the program. If you have questions regarding a Participating Carrier's terms of service, please

contact the Participating Carrier to request more information. Metro does not accept any responsibility or liability for the service a Participating Carrier provides to you and your use of a Participating Carrier's service is at your own risk.

#### DISCRIMINATION POLICY

Metro is committed to ensuring that no person is excluded from participation in or denied the benefits of its services, including the program, based on race, color or national origin, as provided by Title VI of the Civil Rights Act of 1964, as amended. For more information, please visit <https://www.wmata.com/riderguide/civil-rights.cfm>.

#### GENERAL TERMS

Severability and Waiver: The invalidity of any term or provision of these Terms will not affect the validity of any other provision. Waiver by Metro of strict performances of any provision of these Terms will not be a waiver of or prejudice Metro's right to require strict performance of the same provision in the future or of any other provision of these Terms.

Sovereign Immunity: You acknowledge that Metro is an interstate compact agency of the District of Columbia, the State of Maryland and the Commonwealth of Virginia; that Metro has sovereign immunity; and that by agreeing to these Terms, Metro does not waive such sovereign immunity. You understand and agree that you may not assert for your own benefit any immunity from claims available to Metro under the Metro Compact.

DISCLAIMER OF WARRANTY: THE PROGRAM AND ANY OTHER MATERIAL, INFORMATION OR SERVICES RELATED TO THE PROGRAM IS PROVIDED BY METRO ON AN "AS IS" AND "AS AVAILABLE" BASIS AND YOUR USE OF OR PARTICIPATION IN THE SAME IS AT YOUR OWN RISK. METRO MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. METRO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. METRO AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, LICENSEES, OR CONTRACTORS WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND ARISING FROM YOUR USE OF THE PROGRAM INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES.

Limitation of Liability: WITHOUT LIMITING METRO'S SOVEREIGN IMMUNITY IN ANY WAY, NEITHER METRO NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, LICENSEES, OR CONTRACTORS, SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOSS OF USE, PROFIT OR REVENUE TO YOU OR ANY THIRD PERSON ARISING FROM YOUR PARTICIPATION IN THE PROGRAM. THIS LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER (a) YOU BASE YOUR CLAIM ON CONTRACT, TORT, STATUTE, OR ANY OTHER LEGAL THEORY, (b) METRO KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF SUCH DAMAGES, OR (c) THE LIMITED REMEDIES PROVIDED IN THIS SECTION FAIL OF THEIR ESSENTIAL PURPOSE. IN NO EVENT SHALL METRO'S TOTAL LIABILITY TO YOU IN CONNECTION WITH THE PROGRAM FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION EXCEED THE COST OF THE \$6.00 SUBSIDY.

Indemnification: You will defend, hold harmless, and indemnify Metro and its affiliates, directors, officers, employees, agents, licensees, or contractors from any claim or action brought by a third party, including all damages, liabilities, costs and expenses, including reasonable attorneys' fees, to the extent resulting from, alleged to have resulted from, or in connection with: (1) your breach of your obligations

herein; or (2) the violation of any copyright, trademark, service mark, trade secret or United States patent by the Application, Contributions or your development activities.

Assignment and Delegation: You may not assign or delegate any rights or obligations under these Terms. Any purported assignment and delegation shall be ineffective. Metro may freely assign or delegate all rights and obligations under these Terms, fully or partially without notice to you.

Governing Law; Disputes: These Terms shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without regard to its choice of law provisions, except that in the case of any direct and irreconcilable conflict between Commonwealth of Virginia law and the Metro Compact, the Compact shall prevail. You agree to submit to the sole and exclusive jurisdiction of the U.S. District Court for the Eastern District of Virginia, Alexandria Division. In the event of any breach of the provisions of this Agreement, Metro may be entitled to equitable relief, including in the form of injunctions and orders for specific performance, where the applicable legal standards for such relief in such courts are met, in addition to all other remedies available to Metro at law or in equity.

Entire Agreement: These Terms constitute the complete and exclusive agreement between Metro and you with respect to the program and supersede all prior oral or written understandings, communications, or agreements not specifically incorporated herein. Metro reserves the right, in its sole discretion, to modify or revoke these Terms, including but not limited to the eligibility requirements, at any time and without notice. Your continued participation in the program shall signify your acceptance of any modifications.