

## **SMARTBENEFITS® FOR QUALIFIED EMPLOYEE TRANSPORTATION (COMMUTING) BENEFITS TERMS AND CONDITIONS**

### **INTRODUCTION**

The Washington Metropolitan Area Transit Authority (WMATA) created and administers the SmartBenefits® Commuter Benefit Program (SmartBenefits®) in accordance and compliance with the Qualified Transportation Fringe Benefit Program authorized by IRC Sections 132(f) (2) and 132(f) (6) to provide tax-exempt, qualified transit and/or qualified parking funds to qualified employees through employer registration into such programs.

By registering for and ordering or receiving SmartBenefits® through this portal, employers, third-party administrators, vanpool and other transit providers (collectively “Users”) accept and agree to be bound by SmartBenefits® terms and conditions, other provisions of this Agreement and other applicable WMATA policies, including the System of Records Notice and Public Access to Records Policy, the WMATA Tariff on Metro Fares and the WMATA Tariff on Ridership Rules among others. By using this SmartBenefits® portal, Users certify that they are compliant with all laws, regulations, rules and guidance applicable to the Qualified Transportation Fringe Benefit Program authorized under 26 USC §132(f). None of the information contained herein is intended to confer tax advice to any SmartBenefits® User or employee participant in the SmartBenefits® Program. All Users and employee participants are encouraged to consult a tax professional for interpretation of IRS laws, regulations, and guidance regarding the Qualified Transportation Fringe Benefit Program. Any use of the SmartBenefits® Program or portal will constitute acceptance of this entire Agreement. If you do not agree to abide by the terms and conditions herein, do not use the SmartBenefits® portal.

### **SMARTBENEFITS® PROGRAM FOR QUALIFIED EMPLOYEES**

SmartBenefits® provides a convenient process to purchase fare with pre-tax dollars to pay for employee, as defined by the IRS, for workplace commuting expenses incurred by commuter highway vehicle, bus, streetcar or train. In addition, SmartBenefits® also may be used to pay for employees’ qualified parking expenses. Participation in the commuter benefit plans requires the employer or employee to fund SmartBenefits® by pre-paying for qualified transit and/or qualified parking with pre-tax dollars on behalf of employees through this portal. Pre-tax payments for SmartBenefits® can be made as a direct employee benefit paid solely by the employer, or as a pre-tax payroll deduction funded by the employee or funded by a combination of the two. Employees must have a registered SmarTrip® card to which the SmartBenefits® funding is added in an amount up to the maximum value permitted under the IRS Code to pay for eligible transit products and/or qualified parking. Employees will receive the SmartBenefits® ordered by their employer or third-party administrator by the first of each month provided that the order was properly placed by the cutoff date posted on this portal.

The SmartBenefits® application and registration must be completed online by the employer or the employer’s Third-Party Administrator (TPA). Upon WMATA’s receipt and acceptance of completed payment method forms, WMATA will assign the employer a customer account number, user ID, and a password. Once registered, the User will be provided with instructions to configure their account to process SmartBenefits® orders. By applying for SmartBenefits®, the User agrees that the User is

responsible for managing the SmartBenefits® Program on behalf of its employees or the employees of its client.

### **EMPLOYEE USE OF SMARTBENEFITS®**

Employees can use their online SmarTrip® account to view their SmartBenefits® transaction history and balance(s) if the SmarTrip® card receiving SmartBenefits® is registered in the name of the employee. Also, and if allowed by their employer, purchase Metro's transit pass products. Employees may allocate SmartBenefits® funds to third-party transit service operators such as MARC, VRE, MTA Commuter Bus and vanpools by creating an account on the SmartBenefits® Passenger Allocation System. Employees can also view the benefit account balance of the SmartBenefits® "purse" used to pay their fare when they tap SmarTrip® card targets as they exit at Metrorail faregates or board Metro or Regional Partner buses.

### **FUNDING SMARTBENEFITS®**

In order to comply with the IRS Code and Regulations, Commuter Benefits may be funded as follows:

1. Pre-tax dollars may be allocated by the employer to fund the SmartBenefits® "transit purse" up to the maximum benefit amount permitted under the IRS Code. The transit purse may be utilized to purchase any WMATA fare product or to purchase fare on any participating transit service provider in the Washington DC metropolitan area; or
2. Pre-tax dollars may be allocated by the employer to fund the "parking purse" for employment-related parking up to the maximum benefit amount permitted under the IRS Code. The SmartBenefits® parking purse can be used for qualified parking expenses at Metro Parking facilities only; or
3. After-tax dollars may be allocated to the "stored value purse" up to the \$300 maximum for that purse. Those funds may be used at eligible transit and parking providers; or
4. Employers may pre-purchase a reserve of SmartBenefits® AnyTime funds which are available for the employer to allocate to SmarTrip® cards enrolled in SmartBenefits® separate and apart from the monthly SmartBenefits® allocation process.

### **ADVANCE PAYMENT OF SMARTBENEFITS® TO WMATA**

SmartBenefits® orders shall be due and payable in advance of the availability of SmartBenefits® by Automated Clearing House (ACH) electronically debited from a registered bank account via Electronic Funds Transfer (EFT) into WMATA's Depository Institution or by bank card. Payment of each SmartBenefits® order must be made in full by the first business day following the employer's or third-party administrator's designated order deadline as a prerequisite to processing SmartBenefits® purchases for the upcoming month. By providing your payment information and selecting a payment method of either ACH-WMATA Originated or bank card, you agree and authorize WMATA to debit/credit or otherwise withdraw funds in the manner, amount and date specified by you, including

transaction fees, if any, without respect to the source of any funds in such account provided by you. You further authorize and agree to pay any and all fees and penalties for any authorized transaction which cannot be processed, is returned or is late. Users that prefer to pay using a bank card may be charged a convenience fee of up to 3% of the total payment amount of each bank card transaction to defray costs incurred by WMATA to process bank card payments. If a convenience fee is applied, the amount of such convenience fee will be shown on the order screen. **EXCEPTION: Government agencies may pay for SmartBenefits® up to one month after the availability of SmartBenefits® if the government agency has utilized a Purchase Order (“PO”) that has been approved by WMATA to secure funding for SmartBenefits® and provides a copy of the same to WMATA. WMATA will not countersign any PO issued for this purpose unless otherwise agreed.**

## **REFUND OF SMARTBENEFITS®**

IRS Regulations state that pre-tax transit benefits cannot be refunded to a User once an election is made. An election is made once the pre-tax transit benefits are loaded into the employee’s SmartBenefits® account by the employer or TPA. WMATA will **NOT** refund unused, rollover SmartBenefits® that are or have been allocated to a SmarTrip® card to any User of the SmartBenefits® Program. However, unused non-rollover SmartBenefits and pre-purchased unused SmartBenefits® AnyTime funds that are not allocated to SmarTrip® cards may be refunded to the employer or TPA in accordance with the SmartBenefits® Terms and Conditions.

## **UNUSED SMARTBENEFITS®**

During registration, the employer may elect to “rollover” each employee’s unused SmartBenefits® subject to maximum rollover limits which may change from time-to-time as determined by WMATA. Such election allows unused SmartBenefits® to remain in the employee’s SmarTrip® account until such time as the employee exhausts the value by using the WMATA transit or parking systems. Once SmartBenefits® are allocated to the employee’s SmartBenefits® account, such funds are non-refundable and never expire as long as the fare technology possessed by the employee is still accepted for use by WMATA to pay fares. The employer may change the rollover election of any one or more employees at any time.

Employers that completely or partially subsidize SmartBenefits® for their employees as a fringe benefit may elect “non-rollover” treatment of those unused SmartBenefits® while configuring the SmartBenefits® account. Such election may apply to a portion or all of employee SmarTrip® accounts registered by the employer. A non-rollover election provides an end of the month sweep of SmartBenefits® that are unused by employees. The unused SmartBenefits® funds recaptured by the sweep are credited against orders for subsequent months until exhausted, until the Employer or TPA terminates the SmartBenefits® account or until such SmartBenefits® account is administratively terminated due to a period of 13 months of inactivity.

The employer may change the non-rollover election of any one or more employees at any time.

The employer may elect to suspend employee benefits. Suspending benefits will remove the benefits from a SmarTrip card. Rollover employers must only use this feature to correct an error. Non-rollover employers may also use this feature to prevent a former employee from using remaining, subsidized

benefits if the employee was terminated before the end of the benefit month. Suspended benefits are applied as a credit against orders for subsequent months until exhausted.

Employers may also elect to purchase SmartBenefits® AnyTime funds. Unused SmartBenefits® AnyTime funds that have not been allocated to SmarTrip® cards may be refunded.

### **INACTIVE SMARTBENEFITS® ACCOUNTS**

Users herein acknowledge and agree that WMATA may administratively terminate any SmartBenefits® account that is inactive for a period of thirteen (13) consecutive months. Users also acknowledge and agree that any unused credits in an administratively terminated SmartBenefits® account up to \$1,000 will be forfeited without further notice. Inactive SmartBenefits® accounts with a credit of \$1,001-\$5,000 will receive written electronic notice of administrative termination of the SmartBenefits® account due to account inactivity as well as information regarding unused credits with such notice sent to the last email address on file. In the event no response regarding unused credits is received within 24 months of the administrative termination date, Users herein acknowledge and agree that such SmartBenefits® credits shall be forfeited to WMATA. SmartBenefits® accounts with credits of \$5,001 or more will receive electronic notice via email to the last email address on file and written notice via USPS mail directed to the attention of the CFO at the last physical address on file regarding the administratively terminated SmartBenefits® account and unused credits. In the event no response regarding such unused credits is received within 36 months of the administrative termination date, Users herein acknowledge and agree that such SmartBenefits® credits shall be forfeited to WMATA.

### **MAXIMUM LIMITS ON SMARTBENEFITS®**

By registering for SmartBenefits®, the User agrees to fund SmartBenefits® in compliance with the maximum pre-tax funding limits imposed by the IRS for Qualified Transportation Fringe Benefit Program. The User also agrees to comply with SmarTrip card maximum funding limits as imposed by WMATA which may change from time to time.

### **TERMINATION OF SMARTBENEFITS®**

SmartBenefits® Users herein acknowledge and agree that WMATA may terminate the User's participation in the WMATA SmartBenefits® Program at any time, and without cause. Users further acknowledge and agree that WMATA may administratively terminate a SmartBenefits® account due to a period of thirteen (13) months of inactivity with any credits in such account subject to these Term and Conditions. Upon termination of a SmartBenefits® account by the Employer or TPA, eligible credits therein may be refunded to the Employer or TPA subject to these Terms and Conditions.

### **ASSIGNMENT OF SMARTBENEFITS®**

Users shall notify WMATA of any assignment of its approved SmartBenefits® account and any rights to participate in the WMATA SmartBenefits® Program to the User's successors and assignees. Any such assignment shall become effective following completion of an application by the successor or assignee and approval thereof by WMATA.

## INDEMNIFICATION

All registered SmartBenefits® Users shall hereby certify to defend, indemnify and hold harmless WMATA, its officers, directors, employees, contractors, subcontractors and agents from and against any third party claims, suits, demands, actions, judgments, awards, liabilities, losses, damages, and expenses (including reasonable attorneys' fees and costs) arising out of or relating to damages or causes of action arising out of WMATA's failure to perform, or failure to comply with its obligation under these Terms and Conditions and the WMATA SmartBenefits® Program. **EXCEPTION: Government agencies shall pay only their own costs and liabilities related to any dispute arising from WMATA's obligations and duties under these Terms and Conditions and related to the WMATA SmartBenefits® Program.**

## PRIVACY AND USE OF INFORMATION

WMATA logos and all related product and service names are marks or registered marks of WMATA and are the property of WMATA. Any unauthorized copying, alteration, distribution, transmission, performance, display or other use of this material is prohibited. Any information WMATA receives through this portal will be used for fulfilling your requests and consistent with the applicable System of Records Notice. We do not lease, sell or otherwise release your information to outside companies for marketing purposes. By providing such information to this portal, you hereby grant WMATA the right to read, use, and distribute information as WMATA deems appropriate in its sole judgment.

Users of this portal are prohibited from posting or transmitting any unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic, objectionable or profane material or any materials that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability or otherwise violate any law. You are also prohibited from posting or transmitting any information, software or other material which violates or infringes on the rights of others, including material which is an invasion of privacy or publicity rights or which is protected by copyrights, trademark or other proprietary right, or derivative works with respect thereto, without first obtaining permission from the owner or right holder. Users are prohibited from posting or transmitting any information, software or other material which contains a virus or other harmful components.

Please review the WMATA System of Records Notice ("SORN") and the WMATA Privacy Policy and Legal Disclaimer to understand WMATA's practices as such policies also governs the User's registration, use and participation in the WMATA SmartBenefits® Program. The WMATA SORN and Privacy Policy and Legal Disclaimer can be reviewed at:

[Routine Uses Applicable to Many WMATA Systems of Records](#)

[SmartBenefits® Records](#)

[SmarTrip® Database](#)

[Privacy Policy and Legal Disclaimer](#)

## **ELECTRONIC COMMUNICATIONS**

When you use this portal, or send e-mails, text messages, and other communications from your desktop or mobile device to us, you may be communicating with us electronically. You consent to receive communications from us electronically, such as e-mails, texts, mobile push notices, or notices and messages on this site or through other WMATA services, and you can retain copies of these communications for your records. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

## **LICENSE AND ACCESS**

Subject to your compliance with these Terms and Conditions, WMATA grants you a limited, non-exclusive, non-transferable, non-sublicensable license to access and use this portal. The license granted by WMATA terminates if you do not comply with these Terms and Conditions

## **DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY**

To the full extent permissible by law, WMATA disclaims all warranties express or implied for all services, information, content, materials, products (including software) or other services included on or otherwise made available to you through this portal, WMATA's servers or that electronic communications sent from WMATA are free of viruses or other harmful components. To the full extent permissible by law, WMATA will not be liable for any damages of any kind arising from the use of any WMATA service, or from any information, content, materials, products (including software) or other services included on or otherwise made available to you through any WMATA website or service, including, but not limited to direct, indirect, incidental, punitive, and consequential damages. All Users of the SmartBenefits® portal herein certify to defend, indemnify and hold harmless WMATA, its officers, directors, employees, contractors, subcontractors and agents from and against any third party claims suits, demands, actions, judgments, awards, liabilities, losses, damages, and expenses (including reasonable attorneys' fees and costs) arising out of or relating to damages or causes of action arising out of WMATA's failure to perform, or failure to comply with its obligation under these Terms and Conditions and the WMATA SmartBenefits® Program. **EXCEPTION: Government agencies shall pay only their own costs and liabilities related to any dispute arising from WMATA's obligations and duties under these Terms and Conditions and related to the WMATA SmartBenefits® Program.**

## **APPLICABLE LAW**

All applicable federal, state and local laws govern user access to this WMATA website and portal. By accessing and registering for WMATA SmartBenefits® through this portal, you accept and agree that any disputes which arise as a result of this Agreement shall be heard in a court of competent jurisdiction located in Washington, DC and shall be interpreted under the laws of the District of Columbia without regard to principles of conflict of laws.