

## SMARTPASS TERMS AND CONDITIONS

### 1. PARTICIPANT COUNTS AND RATES

Rates for this Agreement are as set forth in the VTA Fare Tariff (made available to Institution upon request) and are deeply discounted relative to all other VTA fares. Fares are based on the following three (3) categories:

1. Collegiate Pass  
College & University Systems – Colleges that belong to the California Community College system, San Jose State University, Santa Clara University, and Stanford University.
2. Not-For-Profit Pass
  - a. Nonprofit – An organization granted nonprofit status under state and federal tax exemptions. May also include not-for-profit schools.
  - b. Low-Income Housing – Generally refers to properties required to provide units at below-market rents that are subsidized or discounted based on the tenant's income, unlike "Market Rate Housing" where rents are set by the landlord based on how much the unit is worth in the market. Some examples include: Low-Income Housing, Subsidized Housing, and Senior Housing.
  - c. Government Agency – A local, state, or federal administrative unit of U.S. government.  
In order to qualify for the Not-for-Profit Pass, the Institution must submit its Tax ID Number as recorded in the IRS database. Alternatively, the Institution can provide an affirmation letter from the IRS proving federal tax-exempt status.
3. Corporate Pass  
For-profit – A business, school, residential housing, development, or corporation organized for the purpose of earning profits and enhancing the financial position of the owners.

In order to be eligible for the SmartPass program, the Institution must contract for SmartPass for its entire employee, resident, or student population, as applicable. Determining the "entire population" headcount for purposes of this Agreement will generally follow these principles:

- For Employers: The Agreement will cover all employees whose place of work is in Santa Clara County. Optionally, employers with multiple facility locations within Santa Clara County may choose to cover only selected facility locations in the Agreement. Agreement headcount will include all full-time employees as well as all members of any other class of employees to whom the pass is made available, including part-time employees, contractors, or staffing agency employees. Employers shall provide acceptable documentation to support Agreement headcount figures. While availability or suitability of documents will vary by size and category of business, some examples of acceptable documentation include the following:
  - IRS Form 941 (Employers Quarterly Federal Tax Return)
  - IRS Form 944 (Employers Annual Federal Tax Return)
  - EEO-1 Annual Employer Information Report
  - Payroll or HR management system report, with a transmittal on letterhead signed by a responsible corporate officer
- For Colleges and Universities: The Agreement will cover all enrolled students and may optionally also cover all employees. Student enrollment figures will be as documented in publicly-available reports. Employee counts, if applicable, will be supported by the same documentation that is required of other employers. Employee headcount will include all full-time employees as well as all members of any other class of employees to whom the pass is made available, including part-time employees, contractors, or staffing agency employees. For colleges/universities, see additional sections 24 – 30.
- For Residential Communities: The Agreement will cover all residents ages 5 years and older. Population headcounts will be supported by reports submitted to public agencies or management bodies, residential rosters, or studies prepared during the development approval process (for new communities not yet fully occupied).

SmartPasses may not be provided or resold to individuals outside the Institution or otherwise not part of the population as defined in this Agreement. Institutions may charge eligible participants for SmartPasses but may not charge any more than the per capita rate for the Institution as stated in this Agreement, plus any card fee required by VTA.

Violation of any of these provisions may result in termination of this Agreement and loss of Institution's eligibility for future participation in SmartPass.

### 2. RECORD KEEPING AND SMARTPASS INSTITUTIONAL PORTAL

Institution shall maintain an inventory of all Clipper® SmartPass cards received from VTA and a log of card serial numbers and names of assigned cardholders. VTA reserves the right to audit headcount reports (including payroll records or other relevant information) to verify the number of eligible participants at the Institution's location(s). Institution's primary SmartPass coordinators will have access to the SmartPass Institutional Portal (see SmartPass Institution Portal Training Guide for instructions). Clipper® card inventory will be reflected in the SmartPass Institutional Portal. With this tool, coordinators will have the ability to run utilization reports, deactivate SmartPass Clipper® serial number(s), reactivate SmartPass Clipper® serial number(s), and request new Clipper® SmartPass cards (see SmartPass Institution Portal Training Guide for full list of capabilities).

## **SMARTPASS TERMS AND CONDITIONS**

### **3. PAYMENT**

#### **New Customers:**

For a new (first-time customer) annual Agreement, full payment is due prior to receipt of Clipper® SmartPass cards, unless a payment schedule has otherwise been agreed upon in writing between the Institution and VTA. Payment will include the calculated rate for annual SmartPasses, plus the Clipper® fee per card order for a specified quantity of Clipper® cards, as discussed further in Section 6 below. Any proration based on Agreement effective dates will be applied on a monthly basis.

#### **Renewing Customers:**

For a renewed (returning customer) annual Agreement, full payment is due 15 days prior to the expiration date of the current SmartPass agreement between VTA and the Institution, meaning the agreement that this Agreement is renewing (hereinafter referred to as “Prior Agreement”). Delays in payment may result in disruption of access to transit services. Renewal payments not received prior to the Prior Agreement expiration date will result in the deactivation of all SmartPasses assigned to the Institution. For colleges/universities, see section 24 – 30.

If the renewing Institution requests additional Clipper® SmartPass cards during the Renewal Period, payment for such is due at the same time as the renewal payment, as described immediately above. If the renewing Institution requests additional Clipper® SmartPass cards after the end of the Renewal Period, payment for such is due prior to delivery of cards. The “Renewal Period” commences upon the Institution’s receipt of this Agreement for renewal and concludes 15 days prior to the expiration of the Prior Agreement.

If the renewing Institution has an outstanding balance, the Institution is not eligible to participate in the SmartPass Program and may have its inventory of SmartPasses deactivated until outstanding balances are settled.

### **4. ELIGIBLE SERVICE AND FARE VALIDATION**

Standard SmartPasses are valid fare for all VTA-operated fixed route Bus and Light Rail services through the Agreement period. A Standard SmartPass is a valid fare on VTA Local Bus and Light Rail services only; premium fare and special event service are excluded from the SmartPass program. Access to VTA Express Bus service is available through the Express SmartPass option.

For use on VTA Bus service, Clipper® SmartPass cards will be tagged on the Clipper® reader mounted on the bus upon boarding the bus. For use on VTA Light Rail, SmartPass holders are required to tag their Clipper® SmartPass cards on a Clipper® card reader on the station platform before boarding. SmartPass holders are subject to all VTA fare inspection regulations.

The Standard SmartPass is not honored on Highway 17 Express, Dumbarton Express, Caltrain, Monterey-Salinas Transit, Altamont Commuter Express (ACE), or other services not directly operated by VTA.

The optional **Express** SmartPass is available at an additional cost and is also honored as valid fare on VTA Express Bus service, Highway 17 Express, Dumbarton Express, and Monterey-Salinas Transit (MST) service as follows:

- On the Dumbarton Express, participants from Institutions with an Express SmartPass Agreement can use Clipper® SmartPass cards the same as they would on VTA-operated service. The Express SmartPass is honored for full fare.
- For Express SmartPass participants using the Highway 17 Express or MST services, VTA shall provide annual holographic “E” stickers to be affixed to employee photo ID badges. Participants shall present the badge and sticker to the Highway 17 Express or MST coach operators upon boarding. The sticker together with the badge will be honored for full fare. The Clipper® SmartPass card does not have to be presented. The E sticker is not honored for fare on VTA Bus or Light Rail services, therefore, if a rider needs to use both the Highway 17 Express (or MST) services and VTA services, the rider will need to carry both the Clipper® SmartPass card and the employee photo ID with E Sticker.

Employer SmartPass Agreements also provide credit equal to the VTA Adult Base Fare towards a One-Way Trip on VTA’s complementary ADA paratransit service. No credit will be provided for any other type of paratransit trip, including premium services or service charges. For colleges/universities, see section 24 – 30.

### **5. CLIPPER® SMARTPASS CARDS AND PHOTOS**

To reduce the opportunity for fraud and misuse, and for the sustainability of the SmartPass program, VTA recommends that the Institution print the participant’s name and photo on the back of each Clipper® SmartPass card.

Upon request from an authorized representative of the Institution, and at VTA’s sole discretion, VTA may provide photo-printing services and maintain the pre-paid Clipper® SmartPass card supply on behalf of the Institution. The Institution may track and monitor its VTA-maintained pre-paid card inventory via the SmartPass Institutional Portal.

## **SMARTPASS TERMS AND CONDITIONS**

### **6. CLIPPER® CARD FEE**

Effective October 3, 2016, any Clipper® SmartPass cards supplied pursuant to this Agreement are subject to a one-time \$3.00 per card fee. This is (i) a fee for the cost of Clipper® cards, as determined and assessed by the Metropolitan Transportation Commission (MTC), manager of the Clipper® program, and (ii) subject to change upon notification by MTC.

### **7. PARTICIPANT TERMINATION**

Institution shall use the SmartPass Institutional Portal to deactivate the Clipper® SmartPass card serial number for any participant who loses his/her eligibility, no later than 30 calendar days after the participant's loss of eligibility. Loss of eligibility includes but is not limited to the following situations: employees no longer with the company, students no longer enrolled, or staff no longer employed with the college/university, or individuals that no longer reside in the residential community. For colleges/universities, see section 24 – 30.

### **8. HEADCOUNT CHANGES**

Institution is required to notify VTA, in writing, within 30 calendar days of any significant increase in the participant headcount for this Agreement. For this purpose, "significant increase" means: (i) an increase of 5% or more above the current Agreement headcount for Institutions with less than 10,000 participants, or (ii) any headcount increase of 500 or more individuals for Institutions with 10,000 or more participants. Upon receiving such notification, VTA will invoice Institution for the additional headcount based on the per-capita rate(s) established in this Agreement, pro-rated for the remainder of the Agreement term. Institution shall make payment for the change within 30 calendar days of receiving VTA's invoice.

Institution may request Agreement adjustments for significant headcount decreases of 10% or more below the currently Agreement headcount. Requests for Agreement adjustments will only be considered if the Institution provides, at the time of its request, an equivalent number of Clipper® SmartPass card serial numbers to be deactivated. If adjustments are accepted, VTA will credit the Institution for the change in headcount for the number of months remaining in the Agreement term. For colleges/universities, see section 24 – 30.

If the Institution is renewing this Agreement for less than its Prior Agreement headcount, the Institution must submit a list of Clipper® SmartPass card serial numbers to be deactivated as of effective date of this Agreement term. If the Institution fails to provide a deactivation list prior to the effective date of this Agreement, the headcount will not be adjusted from the Prior Agreement, and such headcount be invoiced for this Agreement for the entire year.

### **9. LOST, STOLEN, or CONFISCATED CLIPPER® SMARTPASS CARDS**

If a Clipper® SmartPass card has been lost or stolen, the Institution shall immediately deactivate that Clipper® serial number via the SmartPass Institutional Portal (see SmartPass Institution Portal Training Guide for instructions). After deactivation, if Institution maintains a card inventory of Clipper® SmartPass cards, Institution may provide a replacement card to the participant who reported the loss. Institution will provide no more than one (1) replacement SmartPass to any single individual during the term of this Agreement.

All Clipper® SmartPass card replacement requests must go through the Institution's SmartPass coordinator. If a SmartPass-registered card holder contacts Clipper® customer service or initiates an on-line request for a replacement, Clipper® may impose a \$5 replacement fee and any active Clipper® products or cash value previously loaded by that card holder will be transferred to the replacement Clipper® card. All replacement Clipper® SmartPass cards initiated through Clipper® or the Clipper® website will be mailed directly to VTA. If Clipper and VTA cannot verify the SmartPass eligibility of the card holder, the SmartPass on the replacement card will be deactivated and the card will be mailed directly to the card holder.

Clipper® SmartPass cards confiscated by Fare Inspectors or Coach Operators will be deactivated, and the Institution coordinator will be notified of such. Fare evasion, or unauthorized or fraudulent use of fare media may result in fines and/or incarceration pursuant to California Penal Codes §483 or §640.

Clipper® SmartPass cards that have been turned in to VTA's Lost and Found will be stored at the VTA Customer Service Office (located at 55-A West Santa Clara Street, San Jose, CA, 95113) unless VTA is able to identify the owner with the help of the Institution coordinator. If unclaimed after three (3) months, VTA will deactivate the SmartPass, block the Clipper® card, and notify the Institution coordinator.

### **10. EMERGENCY RIDE HOME PROGRAM**

Only Employer SmartPass participants are eligible to use the VTA Emergency Ride Home Program. During the term of this Agreement, on any day when an eligible SmartPass participant travels from home to work utilizing the VTA Bus or Light Rail services, that participant may use the Emergency Ride Home Program by contacting his/her Institution coordinator.

### **11. IMPROPER USE OF SMARTPASS**

The SmartPass and other VTA fare media are nontransferable and, therefore, cannot be sold, transferred, or duplicated. Transfer of the SmartPass constitutes fare evasion, a violation of California Penal Code §640. VTA has the right to deactivate any or all passes if VTA believes that the SmartPass Program has been misused in any way by the Institution. VTA also reserves the right to pursue claims or demands against, or seek prosecution of, anyone who transfers, duplicates, alters, or commits unauthorized use of the SmartPass with the intent to defraud.

## **SMARTPASS TERMS AND CONDITIONS**

Institution shall notify participants at the time of distribution that SmartPasses are nontransferable to family or friends. In the case of repeated instances of participants' misuse of SmartPasses, the Institution bears the risk of termination of this Agreement without refund.

VTA may deactivate any SmartPass if there is reason to believe that the SmartPass was issued based on false information provided by Institution or that the SmartPass has been transferred to a non-eligible person.

### **12. AGREEMENT TERMINATION**

Institution may terminate this Agreement by giving VTA written notice at least 60 calendar days prior to the effective termination date. All SmartPasses loaded on Clipper® cards issued to the Institution will be deactivated upon the effective termination date. VTA shall issue Institution a prorated refund for the unused period.

VTA may terminate this Agreement at any time with or without cause. Upon such termination, VTA will immediately block use of the SmartPasses and shall return Institution's payment on a prorated basis within 30 calendar days of the termination date. Termination due to improper use, fraud, or other violations of this Agreement will be ineligible for refund.

### **13. MODIFICATION**

VTA reserves the right to change these terms and conditions at any time. Notice of any modifications will be posted to the web at [www.VTA.org/SmartPass](http://www.VTA.org/SmartPass) and will be communicated by email to SmartPass program coordinators or other recognized points of contact for participating Institutions. It is the responsibility of the Institution to check VTA's website for changes to the SmartPass program.

### **14. NO ASSIGNMENT**

Institution will not assign or transfer this Agreement or any portion thereof without the prior written consent of VTA. Any assignment, transfer, change, or subcontract in violation of this Agreement will be void.

### **15. PERSONALLY IDENTIFIABLE INFORMATION ("PII")**

Because SmartPasses are furnished on Clipper® electronic fare cards, SmartPasses are subject to MTC's privacy policy, which can be found here: [www.clippercard.com/ClipperWeb/privacy.do](http://www.clippercard.com/ClipperWeb/privacy.do).

#### **How VTA Uses PII**

VTA will use the PII collected in order to process the following services: card replacements, card printing, card audits, Agreement renewals, and aggregated anonymous reports of travel pattern data, as discussed in Section A below. VTA does not sell or rent PII to any third party. VTA will not disclose PII to any third party not affiliated with us, except for disclosures to contracted service providers who assist VTA in the administration of the SmartPass program, and disclosures that are required by law, as discussed in Section B below. VTA contracted service providers will not share PII and will limit their use of gathered information to advance their ability to deliver requested services to VTA.

#### **A. Travel Pattern Data**

Travel Pattern Data is information associated with a Clipper® card's trip start and end points, routes used, and date(s) and time(s) traveled. Individual Clipper® card Travel Pattern Data is aggregated and provided to Institutions as anonymous usage data.

#### **B. Disclosure of Personal Information as Required by Law**

In the State of California, laws exist to ensure that government is open, and that the public has a right to access appropriate records and information possessed by state and local government. At the same time, there are exceptions to the public's right to access public records. These exceptions serve various needs, including maintaining the privacy of individuals. Both state and federal laws provide exceptions. All information collected becomes public record that may be subject to inspection and copying by the public, unless an exemption in law exists. In addition, we will disclose personal information when required by law, or if we have a good-faith belief that such action is necessary to (a) comply with a current judicial proceeding, a court order, or legal process served on us, (b) protect and defend our rights, or (c) protect the rights, property, and other interests of our users or others. Information in anonymous, aggregated form may be shared freely.

### **16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between VTA and Institution relating to the subject matter hereof and supersedes any previous contracts, agreements, or understandings, whether oral or written. Neither party will be bound by any oral agreement or other understandings contrary to or in addition to the terms and conditions as stated herein.

### **17. AMENDMENT**

Except as expressly provided herein, the provisions of this Agreement will not be altered, modified, or amended except through the execution of a written amendment executed by VTA and Institution.

## **SMARTPASS TERMS AND CONDITIONS**

### **18. GOVERNING LAW**

The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Institution and VTA, without regard to conflict of law provisions.

### **19. FORUM SELECTION**

Institution will resolve any claim, cause of action, or dispute (collectively "Claims") that Institution has with VTA, arising out of or related to this Agreement, in a state or federal court located in Santa Clara County, California. Institution agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such Claims.

### **20. NONWAIVER**

The failure of VTA to insist upon the strict performance of any of the terms, covenants, or conditions of this Agreement will not be deemed a waiver of any right or remedy that VTA may have and will not be deemed a waiver of VTA's right to require strict performance of all of the terms, covenants, and conditions hereunder.

### **21. SEVERABILITY**

If any of the provisions of this Agreement (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Institution shall negotiate an equitable adjustment in the provisions of the Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.

### **22. AUTHORIZED REPRESENTATIVE**

Authorized Representatives will be those identified on the signature page of this Agreement. Authorized Representatives, or assigned designees, have authority to authorize changes to the scope, terms, and conditions of this Agreement, as set forth herein.

### **23. NOTICES**

Notices must be in writing and be addressed to the Authorized Representatives at the addresses set forth on the signature page of the Agreement.

**The following Sections (24 - 30) apply to Institutions that are colleges/universities only. If applicable, to the extent there is a conflict between Sections 24-30 and any other provision in this Agreement, Sections 24-30 will govern.**

### **24. PARATRANSIT SERVICES**

Per VTA Fare Tariff, no credit will be provided for any type of Paratransit trip, including premium services or service charges. San Jose State University Students currently participating in the SmartPass Program who are eligible for VTA's Paratransit services shall receive a credit from VTA equal to the Adult Single Ride fare toward a Paratransit One-Way Trip; no credit for any other type of Paratransit trip will be given.

### **25. EMERGENCY RIDE HOME PROGRAM**

Students, Faculty, and Staff are not eligible for the Employee Emergency Ride Home Program.

### **26. STUDENT, FACULTY AND STAFF TERMINATION**

At the end of each quarter/semester, Institution will deactivate on the SmartPass Institutional Portal all students no longer enrolled and all students, faculty, and staff no longer eligible for a SmartPass.

### **27. STUDENT TRANSPORTATION AND SMARTPASS PROGRAM FEES**

Institution may charge eligible participants for SmartPasses, plus any card fee required by VTA, but may not charge more than the per student SmartPass rate for the specified academic year as stated in this Agreement. Institutions with transportation or other fees such as administration and marketing related to SmartPasses must provide VTA with a breakdown of the student's quarter/semester total fees, including the cost of their SmartPass.

### **28. STUDENT CENSUS DATA**

The calculated total payment due for each quarter/semester will be based on publicly-available student census reports. Adjustments for any concurrent students who attend campuses simultaneously to avoid being double counted and students taking online classes that do not reside in Santa Clara County will be explained by Institution on a letterhead transmittal signed by the management representative of the responsible department. After the close of each quarter/semester enrollment period, the official census data will be emailed immediately by Institution to [SmartPass@vta.org](mailto:SmartPass@vta.org).

## **SMARTPASS TERMS AND CONDITIONS**

### **29. INVOICE AMOUNT**

Student rates are set forth in the VTA Fare Tariff. Invoices will be based on the number of students as of the census date, as well as any faculty and staff as documented by supporting documents, if applicable.

### **30. PAYMENT SCHEDULE**

Payment for all passes must be remitted by Institution within 30 days of the beginning of each quarter/semester, or within ten days of its collection of census data of total student enrollment for that quarter/semester, whichever date occurs later. If payment is not remitted within 90 days of the start of a quarter/semester, the past due amount will be sent to collection. Institutions with outstanding balances are not eligible to participate in the SmartPass Program and all SmartPasses will be deactivated until outstanding balances are settled.