



Agenda Item 4a
Bay Area Metro Center
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San Francisco, CA 94105
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TO: Clipper® Executive Board

DATE: April 10, 2017

FR: Carol Kuester

RE: Clipper® Cardholder License Agreement

Background

The Clipper® Cardholder License Agreement (“Cardholder Agreement”) governs the legal arrangement between the Metropolitan Transportation Commission (MTC) and each individual Clipper® cardholder. Two changes are planned.

1. MTC’s evaluation of possible options for accessing inactive card funds has led to planned revisions in the cardholder agreement that set the stage for potential future actions.
2. MTC’s privacy officer has advised that cardholders are responsible for release of their personally identifiable information when they use Clipper® cards for reasons other than fare payment (e.g., bike share, school IDs) and that they be so notified via the cardholder agreement.

Cardholder Agreement Revisions

MTC staff have recently drafted revisions to the Cardholder Agreement. The Cardholder Agreement as revised will go into effect after being published on the Clipper® website, as described below. For your information, the revised Cardholder Agreement is an Attachment to this memo.

New provisions in the Cardholder Agreement cover the following:

1. A Clipper® card not used for three or more consecutive years may potentially be blocked and the funds on that card may, at MTC’s discretion, not be refunded (Sections 1.8 and 9.2);
2. A cardholder may, at MTC’s discretion, not be refunded or credited with value ordered online that has not been picked up within 180 days (Sections 1.9 and 7.3); and
3. Any voluntary disclosure by a cardholder of their Personally Identifiable Information (PII) to a third party, or a cardholder’s use of their Clipper® card with some entity other than a transit agency, is at the cardholder’s risk (Sections 12.6 and 13).

At this time, no changes are proposed to exercise provisions one and two above, but we recommend including this language in the Cardholder Agreement now to fully inform cardholders in advance that this might occur. Without these changes, cardholders have a reasonable expectation that their balances will never expire. These changes put them on notice that this may not be the case.

The Cardholder Agreement as revised will next be translated into Spanish and Chinese, before being posted on the Clipper® website in those languages as well as English. Changes to the Cardholder Agreement go into effect thirty days after posting on the Clipper® website. A Clipper® cardholder is conclusively deemed to have agreed to the changes by acquiring or using a Clipper® card after the revised Cardholder Agreement goes into effect.



Carol Kuester

Attachment:

- Attachment A: Revised Clipper® Cardholder Agreement

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DRAFT – 3/13/17

Additions underlined; deletions struck.

CLIPPER® CARDHOLDER LICENSE AGREEMENT

YOUR FIRST USE OF THE CLIPPER® SMART CARD MEANS YOU ACCEPT THE TERMS AND CONDITIONS OF THIS CLIPPER® CARDHOLDER LICENSE AGREEMENT.

1. DEFINITIONS

1.1 The Card – is the Clipper® Card licensed to Cardholders to pay transit fares on participating transit systems. The Card is the property of MTC, the Card Issuer. Each Card is uniquely identified by a serial number printed on the back of the Card.

1.2 MTC – is the Metropolitan Transportation Commission.

1.3 Cardholder – is the bearer of a Card.

1.4 Service Providers – are transit agencies participating in the Clipper® Fare Payment System (FPS). Current information on Service Providers is available at clippercard.com.

1.5 Clipper® Customer Service Center – is an agent of MTC.

1.6 Registered Card – is a Card for which the Cardholder has provided a valid name, address, phone number and email address (if available) to the Clipper® Customer Service Center for the creation of a record in the Clipper® customer database.

1.7 Use – includes registering a Card, adding cash value or a transit pass to a Card, or using a Card to pay for transit service or parking.

1.8 Inactive Funds – Fund balance on a Card not Used within the previous three (3) or more consecutive years.

1.9 Undelivered Order – Transaction ordering products or cash value that is not added to a Card for more than one hundred eighty (180) days after payment has been received.

2. CARD TYPES

2.1 Four types of Clipper® cards are available:

2.1.1 Adult Cards – are available for Use by all Cardholders.

2.1.2 Youth Cards – are available for Cardholders eligible for youth discounts offered by Service Providers. Date of birth information will be encoded onto the Card.

2.1.3 Senior Cards – are available for Cardholders eligible for senior discounts offered by Service Providers. Date of birth information will be encoded onto the Card.

2.1.4 Senior/Disabled Cards – are distributed in accordance with the Regional Transit Connection (RTC) Discount Card Program, which is managed by the Service Providers.

3. FARE PAYMENT TRANSACTIONS

3.1 Each Service Provider determines the fares and other conditions for Use of the Card on its transit system.

3.2 For cash transactions, the value of each ride is deducted from the Cardholder's cash balance when he/she Uses his/her Card.

3.3 All fares, including promotional or discount fares, are subject to review, change, and withdrawal by the relevant Service Provider at any time.

3.3.1 If the Cardholder is eligible for a discount based on age, date of birth information must be encoded onto the Card. The Service Provider's existing policy for cash discounts based on age shall determine whether a discount cash fare is deducted at the point of use.

3.4 If a ride costs more than the cash value on the Cardholder's Clipper® card, Clipper® may let the Cardholder complete the trip even if the fare exceeds the Card's remaining value. However, sufficient value must be added to the Card to pay for the prior trip before the Card can be used again.

3. If, for any reason, the Card is not accepted for fare payment on a participating Service Provider, the Cardholder may be required by the Service Provider to pay the fare in cash.

4. ADD VALUE TRANSACTIONS

MTC may require a minimum add value amount when the Cardholder acquires the Card. The maximum amount of cash value that can be stored on any Card is \$300. If a Cardholder tries to load cash that causes the Card balance to exceed \$300, the entire transaction will not be processed. The Cardholder is responsible for knowing his/her balance.

5. CARD LOSS AND DAMAGE

5.1 The Cardholder shall not alter or interfere with the graphic or data of the Card and shall take care to ensure that it is not interfered or tampered with. Cards that have been visibly altered will be considered damaged and not defective.

5.2 Balance Restoration for Lost, Stolen and Damaged Clipper® Cards:

5.2.1 Only a Registered Card is eligible for card balance protection in the event that a Card is lost, stolen or damaged. A Cardholder may apply to MTC for the cancellation of a lost, stolen or damaged Card and the issuance of a new Card or a refund subject to the payment of any fees, as described in Section 10.

5.2.2 The Cardholder is responsible for any payments made ~~for Use of with~~ the Card up until the time when the Cardholder reports the Card lost, stolen or damaged to the Clipper® Customer Service Center.

5.2.3 When issuing a replacement or refund for a lost, stolen or damaged Card, the Clipper® Customer Service Center will restore the full value of a Registered Card's balance as of the time when the Card was reported lost, stolen or damaged. If the Cardholder requests a replacement for a damaged Card at an authorized in-person location, the Clipper® Customer Service Center will restore the full value of the balance at the time the damaged Card is surrendered for replacement. Period passes (passes valid for a specified time limit) and stored ride products (multiple-ride discounts) that are restored will have the same expiration date as the fare products that were on the original Card.

5.2.4 A Cardholder with a lost, stolen, damaged or defective Senior/Disabled (RTC Discount) Card may apply for its cancellation and the issuance of a new Senior/Disabled (RTC Discount) Card in accordance with the policies of the RTC Discount Card Program.

5.3 Defective Clipper® Cards

The Cardholder holds the Card at his/her own risk. If the Card malfunctions due to no fault of the Cardholder, he/she may return the Card to the Clipper® Customer Service Center, and MTC shall refund any remaining cash value (except as provided in Section 7.3) or transfer any remaining Card value to a new Card if the Card is returned within one year from the date that the Cardholder first used the Card. If the Clipper® Customer Service Center determines that the card is not defective but has been damaged, the Cardholder may request a replacement card in accordance with Section 5.2.

6. OPTIONAL FEATURES

6.1 Clipper® Card Registration:

6.1.1 The Cardholder can register his/her Adult Clipper® Card with the Clipper® Customer Service Center by providing a valid name, address, phone number and email address (if available).

6.1.2 All Youth and Senior Clipper® cards, as well as Senior/Disabled cards issued in accordance with the Regional Transit Connection (RTC) Discount Card Program, are automatically registered.

6.1.3 A Youth, Senior or Senior/Disabled card that has been registered to an individual is not transferable and can be used only by the person identified in the Clipper® customer database.

6.1.4 A Card must be registered in order for the Cardholder to receive a copy of the transaction history record from the Clipper® Customer Service Center.

6.1.5 The Clipper® Customer Service Center may ~~use~~ utilize the contact information associated with Registered Cards to communicate with cardholders about issues related to the Registered Card, to refund balances on Registered Cards and/or funds collected for Undelivered Orders, or for the operation of the system per MTC's Clipper® Privacy Policy, as referenced in Section 13.

6.1.6 MTC reserves the right to decline a request to register a Card or to refuse Registered Card services (refunds, card replacement, etc.) in order to prevent fraudulent use or abuse of Registered Card features and benefits.

6.2 Autoload:

6.2.1 By setting up Autoload, the Cardholder authorizes MTC to automatically reload value to his/her Card by means of a bank or credit card account whenever one of the following occurs: (1) the Cardholder's cash or BART High Value Discount balance falls below \$10; (2) the Cardholder's transit pass expires (e.g., the first of every month); or (3) the number of stored rides remaining on the Cardholder's Card falls below three.

6.2.2 The Cardholder may request to terminate Autoload at any time by mailing or faxing a written request to the Clipper® Customer Service Center, or by editing the Autoload set-up via the Clipper® website at clippercard.com. In order to complete the Autoload termination process, the Cardholder must tag the Card on a Clipper® card reader after the Clipper® Customer Service Center processes the request. If the Card balance reaches an Autoload threshold identified in Section 6.2.1 before the Autoload termination process is completed, the Card will continue to Autoload the pre-specified value and the Cardholder will be liable for payment.

6.2.3. If Autoload payment for cash value is declined for any reason, the Clipper® Customer Service Center will block the Card. If Autoload payment for BART High Value Discount, a transit pass or stored rides is declined for any reason, the Clipper® Customer Service Center will block that specific transit product from further use. In order to have the value unblocked, the Cardholder must provide a valid payment method on the Clipper® website at clippercard.com or by submitting a signed form to the Clipper® Customer Service Center. The Clipper® Customer Service Center will issue an action to unblock the card or product after collecting funds for the Autoload value.

6.2.4 MTC reserves the right to decline a request to set up a Card for Autoload or to accept an alternative payment (bank or credit card) source in order to prevent fraudulent Use or abuse of Autoload features and benefits.

7. REFUNDS

7.1 A Cardholder may request a refund of the remaining cash value on a Registered Card with a minimum \$5 cash balance by mailing his/her Card to the Clipper® Customer Service Center with a completed Clipper Cancellation Form, which is available on the Clipper® website at clippercard.com. Refunds are subject to the fees in Section 10.

7.2 Requests for refunds for transit passes or stored rides are subject to the policies of the individual Service Providers.

7.3 ~~Undelivered Orders~~ Transactions ordering products or cash value to be added to a Card expire after one hundred eighty (180) days. Any reinstatement or refund to the Cardholder of the value of an Undelivered Order shall be at the sole discretion of MTC.

7.4 The Clipper® Customer Service Center will not provide a refund for any Card that has had value added through a pre-tax or tax-exempt transit benefit program established pursuant to the Internal Revenue Code Section 132, regardless of when value was added or whether value was also added by other means.

7.5 MTC reserves the right to refuse to provide a refund of cash value that was added to a Registered Card prior to the Card's being registered in the name of the Cardholder requesting the refund.

8. CARD VALUE

8.1 MTC's master record of the Clipper® FPS is the only record MTC shall accept to establish the amount of remaining value on any Card.

8.2 Information provided by the Clipper® Customer Service Center or through the Clipper® website about the existing value on a Card is only accurate as of the date and time provided and is subject to change. No warranty is given as to the ongoing availability of that cash value in the event the Cardholder (or a prior Cardholder, if any) violates or has violated any term of this Agreement, or if the funding source for a transaction adding cash value to a Card subsequently reverses the payment.

9. CARD EXPIRATION

9.1 The Cardholder's Card will not expire unless the Card is a Senior/Disabled (RTC) Clipper® Card, except as provided in Section 9.2.

9.2 Cards with only Inactive Funds may be blocked, at the sole discretion of MTC. Any refund of Inactive Funds remaining on the Card at the time it was blocked shall be at the sole discretion of MTC, subject to the requirements of Section 7.

10. CARDHOLDER FEES

The following non-refundable fees will be charged to the Clipper® Cardholder, unless waived by MTC:

10.1 Adult Card Acquisition – \$3 (Not applicable when Autoload is set up for an Adult card at the same time the Card is acquired.)

10.2 Card Replacement and Balance Restoration for Adult, Senior or Youth Card – \$5

10.3 Failed Autoload Authorization – \$5 (Assessed on the second occasion that an Autoload funding source associated with the Card is declined and on every occasion thereafter.)

10.4 Card Refund Processing – \$5 (See Section 7.)

The Clipper® program does not govern the fees for RTC Discount Cards. The administrative fees associated with RTC Discount Cards will be set by the Service Providers participating in the RTC Discount Card Program.

11. SELLING OR SHARING CARDS

11.1 The sale by a Cardholder of a Card, or the value loaded on a Card, is strictly prohibited. No warranty is given as to continuing usability of a Card that is purchased from any entity other than an authorized Clipper® Card retailer.

11.2 The sharing by a Cardholder of a Card that is unique to a Cardholder, such as a Youth Card, a Senior Card, or a Senior/Disabled (RTC) Card, or of a Card that has had value or passes added through a pre-tax or tax-exempt transit benefit program established pursuant to the Internal Revenue Code Section 132, is strictly prohibited.

12. RESERVATION

12.1 MTC does not warrant that any particular service and/or facility will be provided by any Service Provider at any time or place.

12.2 No warranty is given that operation of the Card or FPS will be available with any Service Provider at any time or place, and MTC shall not be liable for any loss, injury or damage resulting there from, whether direct, indirect, special or consequential.

12.3 The authorized staff of MTC and the Service Providers shall have the right to inspect any Card and the Card Data therein at any time.

12.4 The authorized staff of MTC and the Service Providers shall have the right to confiscate a Youth, Senior or Senior/Disabled Clipper® Card if it is determined in the exercise of their sole discretion that the individual using the Card is ineligible for the discounts granted therein or if it is determined that the Card is otherwise being used fraudulently.

12.5 MTC reserves the right to:

12.5.1 Recover any cost, expenses, loss, and damages incurred or suffered by MTC as a result of Card alteration or interfering with the Card Data.

12.5.2 Waive these conditions or any part thereof against any person.

12.5.3 Block a Card for non-payment of any value owed by the Cardholder.

12.6 MTC disclaims any responsibility or liability arising out of the utilization or attempted utilization of the Card with non-Service Providers or for other than authorized Uses, as herein defined, including the use/misuse of Cardholder information, including personally identifiable information (PII), as defined in MTC's Clipper® Privacy Policy, as amended, by a non-Service Provider and/or failure to protect Cardholder information, including PII, from unauthorized disclosure.

13. CONFIDENTIALITY OF INFORMATION

13.1 The collection, ~~use~~ utilization, and security of ~~PII information~~ obtained from Cardholders is subject to MTC's Clipper® Privacy Policy, as amended. This policy ~~is consistent with Federal and State laws governing an individual's right to privacy and~~ may be amended from time to time, as deemed necessary by MTC. Any changes to the Privacy Policy will be posted on the Clipper® website, clippercard.com, including the date of the amendment.

13.2 All ~~PII information and data~~ relating to the Cardholder collected by the Clipper® FPS shall be utilized ~~used~~ by MTC and the Service Providers for the purposes of the operation and management of the FPS and shall serve as a source of information and data for transit and/or related services in general but shall otherwise be dealt with in a confidential manner by MTC and the Service Providers unless:

(a) The Cardholder's express consent has been obtained; and/or

(b) ~~As o~~ otherwise required by law or ordered by a court of competent jurisdiction.

13.3 The Cardholder retains the right to review and edit all ~~PII information~~ pertaining to his/her Registered Card account, whether stored electronically or on paper. Any inquiry or request to obtain information, in accordance with the above provisions, should be directed in writing to the Clipper® Customer Service Center. The Clipper® Customer Service Center is only able to provide transaction history data for the prior 60-day period. MTC may adopt procedures for the review of such information, including but not limited to charging a fee for processing requests for access to ~~PII personal information~~.

13.4 MTC cannot secure PII that is released by Cardholders to third parties. A Cardholder who chooses voluntarily to disclose information to a third party does so at his or her own risk. Cardholders are advised to refer to any user agreement or privacy policy promulgated by such third party.

14. TERMINATION

14.1 MTC may terminate this Agreement at any time and for any reason.

14.2 Following termination, the Cardholder will remain responsible for payment of outstanding amounts owed under this Agreement. If such unpaid charges are not properly remitted, the Cardholder may become liable for additional service charges, fines, or penalties, in accordance with the Agreement and/or applicable law.

15. CHANGES TO THIS AGREEMENT

MTC reserves the right to change the terms of this Agreement and any associated policies at any time by providing written notice on the Clipper® website at clippercard.com. Such changes go into effect and t~~The~~ Cardholder will be deemed to have received such notice thirty (30) days after posting of the notice on the Clipper® website. Use of the Card after that date constitutes conclusive proof of the Cardholder's acceptance of such changes. ~~The Cardholder signifies agreement with the changes when he/she uses the Card after that date.~~

16. RELEASE AND INDEMNITY

The Cardholder hereby releases MTC from any and all loss, damage, or injury whatsoever, known or unknown, arising out of or in any manner connected with the U~~use~~ or performance of the Card issued to the Cardholder or the Agreement. Neither MTC, its officers, employees, nor agents will have any obligation or liability with respect to the Cardholder U~~use~~ or the performance of the Card. The Cardholder's sole and exclusive remedy from MTC will be replacement of any defective Card(s). The Cardholder agrees to indemnify, protect, and hold harmless MTC, its officers, employees, and its agents from any and all liability for any loss, damage, or injury to persons or property arising from or related to the Card and/or the Agreement.

17. FAILURE TO COMPLY

17.1 Failure to comply with any portion of this agreement may result in MTC's blocking the U~~use~~ of the Card.

17.2 When the Card is blocked in accordance with Section 17.1 above, the refund of any remaining value on the Card shall be at the sole discretion of MTC and subject to such conditions as MTC deems fit

including but not limited to the surrender of the Card and deduction of any amount due or payable by the Cardholder to MTC and/or any Service Provider.

18. COMMUNICATION

Please address all questions, notifications, and communications to:

Clipper® Customer Service Center

P.O. Box 318

Concord, CA 94522-0318

Tel: 877.878.8883

TTY/TDD: 711 or 800.735.2929 and type Clipper

Fax: 925.686.8221

clippercard.com

Revised and posted to the Clipper website as of _____, 2017.