

# Terms of Use – Metlink On Demand

## 1. Applicability of these Terms

- 1.1. These Terms apply to any use of the Metlink On Demand Service and the Metlink On Demand App.
- 1.2. By using the Metlink On Demand App and/or Service you agree to be bound by these Terms. If you do not accept our Terms then you must not access or use the Metlink On Demand Service.
- 1.3. We may amend these Terms from time to time and will notify you of any changes using the email address associated with an Account.
- 1.4. By continuing to access and use the Metlink On Demand Services or App after we have notified you of the amended Terms, you agree, to be bound by the amended Terms
- 1.5. If you are under the age of 16 you must have your parent's or legal guardian's permission to open an Account and use the Metlink On Demand App or Service. Your parent or legal guardian is, accordingly, bound by these Terms and any changes to these Terms and is and remains responsible for your compliance with these Terms.

## 2. On Demand Service

- 2.1. Metlink will provide the Metlink On Demand Service to you in accordance with these Terms and any other terms or conditions (including Third Party Provider terms) incorporated into these Terms by reference.

## 3. Licence

- 3.1. Subject to your compliance with these Terms, Metlink grants you a non-transferable, non-exclusive licence to access and use:
  - (a) the Metlink On Demand App on your compatible personal devices;
  - (b) the Metlink On Demand Service.

- 3.2. For the avoidance of doubt, the Licence does do not transfer any ownership rights in any Intellectual Property held by Metlink or its Third Party Providers in or related to the Metlink On Demand App or Service and we reserve all rights not expressly granted in these Terms.

## 4. User Accounts

- 4.1. To use the Metlink On Demand Service, you must register a user Account through the Metlink On Demand App.
- 4.2. User Account registration requires you to submit certain information, including Personal Information and one valid Payment Method. You warrant that you have the authority to provide that information.
- 4.3. You agree to maintain accurate, complete and up to date information in your Account at all times. A failure to do so may result in you being unable to access the Metlink On Demand Service.
- 4.4. You are responsible for all activity that occurs on or in relation to your Account and you agree to maintain the security and secrecy of your Account ID at all times. This responsibility extends to unauthorised access to your Account or the Metlink On Demand App on your device not caused by any act or omission of Metlink or its Third Party Providers.
- 4.5. You must notify us as soon as you become aware of any unauthorised access to or use of, your Account or Account ID.

## 5. Acceptable Use

- 5.1. When using the Metlink On Demand App and Service you must comply with these Terms, all applicable Laws, and any other terms or guides incorporated into these Terms by reference.
- 5.2. You may allow or authorise third parties to access the Metlink On Demand Service (**Authorised Users**). When they use the Metlink On Demand Service,

these users also agree to comply with all applicable Terms, all applicable Laws, and any other terms and guides incorporated into these Terms by reference. You remain, however, fully responsible for the acts and omissions of your Authorised Users.

## 6. Network and Devices

- 6.1. You are responsible for acquiring and maintaining a Technical Environment suitable to access and use the Metlink On Demand App.
- 6.2. Your mobile network's data and messaging rates and fees may apply if you access or use the Metlink On Demand App through a wireless enabled device and you are responsible for such rates and fees.

## 7. Requesting a Ride

- 7.1. Instructions on how to request, confirm and cancel a Ride are detailed in the Metlink On Demand User Guide published on the [Metlink Website](#).
- 7.2. You are responsible for ensuring that all the details of the Ride you input through the Metlink On Demand App are correct. Changes cannot be made once a Ride becomes a Reserved Ride.
- 7.3. Subject only to your right of cancellation, Metlink and/or its Transport Providers will provide a Reserved Ride strictly in accordance with its confirmed details (including Pick Up Location, ETA, number of passengers and Destination). This may include refusing to carry passengers additional to those listed in a Ride Reservation or charging the full Ride Fare even if the number of passengers drop from those confirmed in the Reserved Ride.

## 8. Payment

- 8.1. You understand and agree that use of the Metlink On Demand Service will result in the payment of a Ride Fare and you authorise automatic payment of the

Ride Fare via your nominated Method of Payment:

- (a) immediately on boarding; or
- (b) if you do not turn up to your Pick Up Location, at 1 minute past the time the vehicle arrives at your Pick Up Location.

- 8.2. Ride Fares are inclusive of all applicable taxes where required by Law, and are final and non-refundable, unless otherwise determined by Metlink or as required under applicable New Zealand Law.

## 9. Concessions

- 9.1. SuperGold card holders may present their SuperGold card and use the Metlink On Demand Service during the Off Peak Period at no charge. At all other times a Ride Fare will apply.
- 9.2. Children under the age of 5 must be listed as a passenger in a Ride Reservation but, subject to the [Conditions of Carriage](#), may travel free of charge.
- 9.3. No other concessions or discounts apply.

## 10. Accessibility

- 10.1. Subject to clause 10.2, all vehicles used to provide the Metlink On Demand Service will be accessible to mobility-impaired customers.
- 10.2. Metlink On Demand Service vehicles only have the capacity to carry one mobility device within the dimensions specified in the Metlink Conditions of Carriage.
- 10.3. Metlink and/or its Transport Provider reserve the right to accept or reject larger mobility equipment at their reasonable discretion.

## 11. Minors

- 11.1. Minors under the age of 5 are not permitted to hold an Account. They may however, be an Authorised User of the Metlink On Demand Service subject to

the relevant conditions in the [Conditions of Carriage](#).

- 11.2. Subject to clause 1.5 of these Terms, minors over the age of 5 may hold an Account and use the Metlink On Demand App and Service.

## 12. Conditions of Carriage

- 12.1. The Metlink On Demand [Conditions of Carriage](#) apply in relation to your use of the Metlink On Demand App and Service. To the extent that these Terms conflict with any relevant terms in the Condition of Carriage, the Conditions of Carriage will have precedence.

## 13. Cancellations

- 13.1. You may cancel a Reserved Ride at any time up to 5 minutes before the ETA in the Ride Proposal.
- 13.2. You have one 'free' right of cancellation of a Ride Reservation. Subject to clause 13.3, subsequent cancellations will incur a Cancellation Fee.
- 13.3. Metlink will waive the Cancellation Fee in the event that the vehicle arrives more than 5 minutes past the ETA in a Ride Proposal.

## 14. Our Obligations

- 14.1. Metlink intends that the:
  - (a) Metlink On Demand App will be available 24/7; and
  - (b) Metlink On Demand Service as provided by our Transport Provider is available as specified on the Website.
- 14.2. It is possible, however, that the Metlink On Demand App and Metlink On Demand Service may be unavailable for operational reasons, or to permit maintenance, development or other administrative activity to take place and you accept and agree that at times you may not be able to access the Metlink On Demand App or use the Metlink On Demand Service.

- 14.3. Without limiting the generality of clause 14.2, Metlink will not be liable for any non-performance, error, interruption, or delay in the performance of their obligations under these Terms or the non-availability of the Metlink On Demand App or Service, if this is due (in whole or in part, directly or indirectly) to any Extraordinary Event.

- 14.4. Metlink does not store or transmit payment card data. It does, however, process card payments, which are subsequently managed by a Third Party Provider. Metlink will ensure that any such provider is certified as being PCI DSS compliant.

## 15. Collection, Use and Disposal of Data

- 15.1. In using the Metlink On Demand App and Service, including when opening an Account, you will be providing Data to Metlink and its Third Party Providers.
- 15.2. Where the Data is Personal Information, Metlink's collection, use and disposal of the same is governed by the terms in Metlink's [Privacy Statement](#) and, in creating an Account, you agree to those terms.
- 15.3. Metlink and or its Third Party Providers may provide any necessary Data (including your contact information) to an enforcement agency, a claims processor or insurer if there is a compliant, dispute or conflict, which may include an accident, involving you as such Data is necessary to resolve the complaint, dispute or conflict.

## 16. Warranties, exclusions and disclaimers

- 16.1. The limitations, exclusions and disclaimers in this section 16 do not limit liability or alter your rights as a consumer that cannot be excluded under applicable Law.
- 16.2. Subject to clause 16.1, the Metlink On Demand App and Service is provided on an 'as is' and 'as available' basis.

- 16.3. To the maximum extent permitted by Law, Metlink and its Third Party Providers expressly exclude all warranties, express, implied or statutory, not expressly set out in these Terms, in relation to your access to and use of the Metlink On Demand App or Service.
- 16.4. Without limiting the generality of clauses 16.2 and 16.3, we do not guarantee:
- (a) the availability of a Ride;
  - (b) the accuracy, completeness or availability of the Metlink On Demand App or Service; or
  - (c) that the Metlink On Demand App or Service is of any particular quality or suitable for your purposes;
  - (d) that the Metlink On Demand App or Service and/or your access to the same will be available, uninterrupted, error free or free from viruses or anything else of similar destructive qualities;
  - (e) that the Metlink On Demand App will work on any particular device or equipment;
  - (f) that a Ride will start at the ETA or be completed within a particular time.
- 16.5. We are not responsible loss of Data or for faults that occur in your Technical Environment due to your incorrect access to or use of the Metlink On Demand App or because of any other event beyond our reasonable control.
- 16.6. Where a Law implies into these Terms a condition or warranty regarding your access to and use of the Metlink On Demand App or Service that cannot be excluded or modified by these Terms, the condition or warranty is deemed to be included in these Terms.

## 17. Limitation of Liability

- 17.1. To the maximum extent permitted by Law, Metlink (including our employees, contractors, and agents) and its Third Party Providers will not be liable to you (whether in contract, tort, equity or otherwise) for any direct or indirect Loss or any Ride delays of any kind arising out of or in connection with your access to or use of (or inability to access or use), the Metlink On Demand App or Service, regardless of the cause of such Loss or whether you have been advised of the possibility of such Loss.

## 18. Indemnity

- 18.1. You agree to fully indemnify Metlink and hold Metlink harmless from and against any and all claims, suits, actions, proceedings or Loss incurred, suffered or brought against us in respect of or in connection with:
- (a) your and your Authorised Users access to and use of the Metlink On Demand App and Service;
  - (b) any party that has gained access to your Account, Method of Payment, Account ID, and /or the Underlying System and Data through your deliberate or negligent actions or omissions.

## 19. Suspension

- 19.1. Your Account and your ability to access the Metlink On Demand Service may be suspended in the following circumstances:
- (a) where payment of a Ride Fare is declined for any reason by the provider of your nominated Payment Method;
  - (b) in its sole discretion, Metlink or its Third Party Providers become aware of unacceptable patterns of behaviour including, without limitation, continual breaches of the [Conditions of Carriage](#), of confirming a Ride but not arriving at your Pick Up Location or

repeated cancellations of a Reserved Ride;

- (c) Metlink reasonably considers you have otherwise breached these Terms.

19.2. In the event of a suspension you will receive a suspension notice (**Suspension Notice**) via the email address associated with your Account with the reason for the suspension and the time and method by and within which, the breach or other failure must be addressed.

19.3. The period in the Suspension Notice allowed to remedy the breach or failure will be reasonable given the nature of the breach or failure.

19.4. Your Account and your ability to use the Metlink On Demand Service will be reactivated as follows:

- (a) in the case of a Ride Payment transaction failure, your Method of Payment is updated and/or there is a sufficient funds on your nominated Method of Payment to pay a Ride Fare and any outstanding amounts or fees;
- (b) in the case of a suspension under clause 19.1(b), at Metlink's reasonable discretion; and
- (c) in any other circumstance, you have remedied the failure or breach to Metlink's full satisfaction within the time specified in the Suspension Notice.

19.5. You agree that Metlink may charge you a reasonable administration fee to reactivate your Account and impose such other terms as Metlink reasonably considers necessary as a condition of your Account reactivation.

## 20. Termination

20.1. You may stop using the Metlink On Demand App or Service and may terminate these Terms at any time for

any reason by deleting your Account following the instructions in the Metlink On Demand App or by contacting the Metlink Customer Service. Uninstalling the Metlink On Demand App from your device without following the instructions will not delete your Account or the Data held by Metlink and/or Third Party Providers.

20.2. We may immediately terminate these Terms and your access to the Metlink On Demand App and Service if:

- (a) a Default Event occurs;
- (b) you commit a material breach of these Terms which is not capable of being remedied including;
- (c) you commit a breach of these Terms that is reasonably capable of being remedied, but has not been remedied within the time specified in a Suspension Notice;
- (d) in the case of a failed Ride Fare transaction, Metlink is unable to recover the amount owed after 3 months from the date of Suspension Notice;
- (e) you provide information to us that is materially misleading or inaccurate;
- (f) any misuse (including fraudulent activity) of the Metlink On Demand App, Metlink On Demand Service, and/or your Account, by you or your Authorised Users, and any third parties other than where caused by the acts or omissions of Metlink or its Third Party Providers;
- (g) if Metlink's license to use or provide the Metlink On Demand App or Services is terminated or if Metlink otherwise determines it will cease to provide the Metlink On Demand Service.

## 21. Termination

21.1. On termination:

- (a) all rights and licences granted to you under these Terms will terminate immediately;
- (b) we will immediately stop your access to the Metlink On Demand App and Service.

## 22. Customer Service

22.1. You may contact the Metlink Customer Service team in relation to any matter (including disputes) concerning these Terms, your use of the Metlink on Demand App and/or Service through any of the contact methods specified in the Metlink On Demand User Guide on the [Metlink Website](#).

## 23. General

23.1. **Assignment:** You may not assign, charge, sublicense or otherwise deal with your rights or obligations under these Terms in whole or in part to any third party.

### 23.2. Authority:

- (a) If you are registering for access to the Metlink on Demand App or Service on behalf of third party, you represent and warrant that you have the legal authority to agree to these Terms on behalf of that third party.
- (b) If you are under the age of 16, you represent and warrant that you have received a parent's or legal guardian's permission to open an Account and use the Metlink On Demand App or Service as applicable.

23.3. **Continuing Obligations:** Termination will not affect either party's rights or remedies in respect of any breach of these Terms by the other party, where that breach occurred before termination.

23.4. **Entire Agreement:** These Terms and any terms or policies incorporated by reference:

- (a) record the entire agreement between us in relation to the subject matter of these Terms; and

- (b) supersede and cancel all previous understandings or agreements (whether written, oral or both) between us relating to that subject matter.

23.5. **Law and Jurisdiction.** These Terms is governed by, and construed in accordance with, New Zealand law regardless of your country of origin or the country from which you access the Metlink On Demand App. You irrevocably and unconditionally submit to the exclusive jurisdiction of the New Zealand courts in connection with these Terms.

23.6. **Rights and Remedies.** The rights, powers and remedies in these Terms are cumulative and are in addition to any rights, powers or remedies provided at law or in equity, unless specifically stated otherwise. Each party may pursue any remedy that it is entitled to pursue by law.

23.7. **Severability:** Any unlawful provision in these Terms will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, these Terms.

23.8. **Surviving Clauses:** Except as is otherwise provided in these Terms, termination or expiry of these Terms will not affect the provisions of these Terms which expressly, or by their nature, survive termination or expiry, including any terms that relate to ongoing use of the Data, clauses 15 (Collection, Use and Disposal of Data), 16 (Warranties, exclusions and disclaimers), 17 (Limitation of Liability), 18 (Indemnity), and 21 (Termination)

23.9. **Waiver.** A party will not be deemed to have waived any provision of these Terms unless that waiver is in writing and signed by that party. Any such

waiver will not be, or deemed to be, a waiver of any other right under these Terms. Any failure or delay by a party to enforce any provision of these Terms will not be considered to be a waiver of that provision.

## 24. Definitions

**Account** means the account established by entering the requested Data into the Data Metlink On Demand App to enable you to use the Metlink On Demand App to access the Metlink On Demand Service.

**Cancellation Fee** means a fee charged by Metlink in the event you cancel a Reserved Ride less than 5 minutes before the specified ETA as specified on the Webpage from time to time.

### **Confidential Information:**

- (a) Intellectual Property owned by Metlink or its licensors;
- (b) trade secrets;
- (c) the Data;
- (d) Personal Information;
- (e) either party's commercially sensitive materials and proprietary methodologies;
- (f) material which, by its nature, is reasonably considered to be confidential by the party releasing it.

**Data** means all data or information received, collected, processed, generated or supplied by you, and Metlink or its Third Party Providers in relation to use of the Metlink On Demand App or Service.

**Default Event** means where a party:

- (a) becomes bankrupt or insolvent;
- (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed;
- (c) becomes subject to any form of external administration;
- (d) ceases for any reason to continue in business.

**Destination** means the end point of a Ride.

**ETA** means the estimated time of arrival of a vehicle at your assigned Pick Up Location as detailed in a Ride Proposal.

**Extraordinary Event** means an event beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, that party's obligations under these Terms, excluding any event:

- (a) if, and to the extent that, the effect of that event could have been substantially prevented, avoided or mitigated by:
  - (i) exercising a reasonable standard of care; or
  - (ii) using information provided by the other party or available in the public domain;
- (b) for which the affected party is or was directly responsible;
- (c) constituted by the failure of a subcontractor; or
- (d) constituted by the insolvency of either party or lack of funds.

**Intellectual Property** means all copyright, patents, trademarks, trade names, designs, domain names, trade secrets, formulations, inventions, models, plans, licences, know-how, databases, technical information, discoveries, ideas, data, research, results, reports, drawings, techniques, specifications, standards, methods, manuals, get-up, rights in computer software, copyright in works and all rights or forms of protection of a similar nature, throughout the world, whether or not registered, and (where applicable) any application to register any of these rights any includes any Update or any other enhancement, modification or derivative work of the Intellectual Property. **Intellectual Property Rights** has a consistent meaning.

**Law** means: (a) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject; (b) the common law and the law of equity as applicable to the parties from time to time; (c) any binding court order, judgment or decree; (d) any applicable industry code, convention, policy or standard enforceable by law; (e) any applicable direction, policy, permission, consent, license, rule or order that is binding on a party and that is made or given by any governmental, legal or regulatory body having jurisdiction over a party or any of that party's assets, resources or business, in any jurisdiction in which Metlink or you, are resident.

**Loss** means any loss, damage, claim or expense

**Metlink, we us or our** means the Wellington Regional Council, a regional council in accordance with the Local Government Act 2002 operating under the Metlink brand identity.

**Metlink On Demand App** means the software application through which you will open your Account and access the Metlink On Demand Service.

**Metlink On Demand Service** means the provision of a technology platform and associated transport services that enables you to:

- (a) schedule 'on demand' transport services;
- (b) pay for those transport services; and
- (c) travel to your destination from a designated Pick Up Location to your Destination using vehicles managed and driven by our Transport Providers.

**Metlink On Demand User Guide** means any guide to or information on, accessing and using the Metlink On Demand App and Service located on the [Metlink Website](#)

**Payment Method** means the valid and current credit card or debit card details that you associate with your Account for the purposes of paying a Ride Fare.

**Pick Up Location** means the location assigned to you through the Metlink On Demand App and as detailed in a Ride Proposal at which you will meet and board a vehicle for your Ride.

**Personal Information** takes the same meaning as in the Privacy Act 2020.

**Reserved Ride** means a Ride Proposal that has been approved by you as accurate and is now final and cannot be changed except to cancel it.

**Ride** means a Metlink On Demand Service journey from the Pick up Location to the Destination.

**Ride Fare** means the charge for a Ride as published on the Website from time to time.

**Ride Proposal** means a proposal for a Ride issued by the Metlink On Demand App including your assigned Pick Up Location, number of passengers, calculated Ride Fare, ETA and Destination.

**Technical Environment** means an information and communications technology infrastructure, including but not limited to software, hardware, operating systems, servers, internet access, local area networks and wide area networks.

**Terms** means these terms and conditions and any relevant terms and conditions incorporated by reference.

**Transport Provider** means a third party with a service agreement with Metlink that will provide a Ride.

**Underlying System** means the Technical Environment used to provide the Metlink On Demand App including any third party solutions, systems and networks.

**Update** means any enhancement, modification, improvement, patch, bug



fix, release version or successor to the Metlink On Demand App and/or Underlying System.

**Website** means <https://www.metlink.org.nz/about/ondemand/>

**Working Day** means a day other than a Saturday, Sunday or public holiday in New Zealand.

**You** and **your** are, where context dictates, references to you the individual.