



## AGREEMENT FOR PURCHASE OF ORCA BUSINESS CARDS AND ORCA BUSINESS PASSPORT PRODUCTS

THIS AGREEMENT (hereinafter, "Agreement") is made and entered into by and among **City of Tacoma** ("Business Account") and **Pierce Transit** ("Lead Agency") on behalf of any of the following agencies (collectively referred to as the "Agency" or "Agencies").

The Snohomish County Public Transportation Benefit Area ("Community Transit")  
The City of Everett ("Everett Transit")  
King County Department of Transportation, Metro Transit Division ("King County")  
The Kitsap County Public Transportation Benefit Area ("Kitsap Transit")  
The Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit")  
The Central Puget Sound Regional Transit Authority ("Sound Transit")  
The State of Washington acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")

IN CONSIDERATION of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1.0 PURPOSE

- 1.1 This Agreement establishes the terms under which certain fare payment-related services, referred to herein as "ORCA Services," will be provided to the Business Account, including but not limited to the prices and terms under which the Business Account may purchase and distribute ORCA Business Cards loaded with a Business Passport Product to its Eligible Business Cardholders. Such ORCA Business Cards may be used to access certain Transportation Services of the Agencies. The specific ridership privileges applicable to the Business Passport Product provided under this Agreement are specified in Attachment 1, *Products, Pricing and Terms*, which is incorporated in this Agreement by this reference, and are subject to Sections 6 and 17 below.
- 1.2 Attachment 1 also establishes the terms under which specific optional products and services (e.g. use of an ORCA Business Card on vanpool; a guaranteed ride home program), if any, shall be provided by one or more individual Agencies.
- 1.3 This Agreement also enables the Business Account to purchase Business Choice Products from the Agencies, via the Business Account Website, at the prices and terms in effect at the time of purchase.
- 1.4 The Business Account understands and agrees that this Agreement applies to its use of ORCA Services including, but not limited to, its purchase of ORCA Business Cards and ORCA Products. This Agreement does not constitute a contract for transportation services. The Agencies have no obligation to the Business Account or any other entity or person to provide any particular level, frequency or routing of transportation service.

## **2.0 TERM OF AGREEMENT AND CONTACT PERSONS**

2.1 This Agreement shall take effect upon the effective date specified in Attachment 1. Unless terminated in accordance with Section 13, this Agreement shall expire on the last day of the Program Term specified in Attachment 1, or an Amended Attachment 1 that has been signed by a person authorized to bind the Business Account.

2.2 The Business Account shall designate a Primary Contact Person in Attachment 2, *Designated Representatives*, which is incorporated in this Agreement by this reference. This Primary Contact Person shall be responsible for managing the Business Account's roles and responsibilities under this Agreement. A Secondary Contact Person shall also be designated in Attachment 2. The Lead Agency may communicate with and rely upon either the Primary or Secondary Contact Person on matters relating to this Agreement.

## **3.0 DEFINITIONS**

3.1 *Business Account*. The employer, educational or human services institution, government agency or other entity that has entered into this Agreement enabling it to purchase ORCA Business Cards and ORCA Products for distribution to their employees, students, clients or other constituency.

3.2 *Business Account Website*. The website used by the Business Account to manage its account, currently at [orcacard.biz](http://orcacard.biz).

3.3 *Business Choice Products*. The ORCA Products that may be purchased at retail prices to supplement the ORCA Business Passport Product for one or more Business Cardholders (e.g. a WSF monthly pass)

3.4 *Business Cardholder(s) or Cardholder(s)*. The individual(s) who are eligible to receive an ORCA Business Card from the Business Account. The eligibility requirements for Business Cardholders are more fully defined in Attachment 3, *Eligible Business Cardholders*, which is incorporated in this Agreement by this reference.

3.5 *Business Passport Product*. The ORCA Product loaded on the Business Account's ORCA Business Cards under this Agreement that provides the Business Cardholders an unlimited right-to-ride the regularly scheduled Transportation Services of, or operated by, certain Agencies to the extent specified in Attachment 1.

3.6 *Card Block*. An ORCA system process that culminates in invalidating an ORCA Business Card.

3.7 *Lead Agency*. The Agency that entered into this Agreement on behalf of itself and the other Agencies and that is responsible for administration of this Agreement on behalf of the Agencies, including invoicing, contract modifications and renewals, and ORCA system support.

3.8 *ORCA*. The trademarked name of the system that enables use of a common fare card on the public transportation services provided by any of the Agencies.

3.9 *ORCA Business Card (or "Business Card")*. An ORCA fare card issued to a Business Account to enable the loading of ORCA Products for use by a Cardholder to whom it was distributed by the Business Account to access Transportation Services as specified in Attachment 1.

- 3.10 *ORCA Products.* Any transit fare payment mechanism or electronic voucher offered for sale within the ORCA system by any of the Agencies. Examples include, but are not limited to, monthly or period pass, E-purse, and electronic voucher.
- 3.11 *ORCA Services.* The materials and services that may be provided, from time to time, under the ORCA program, including but not limited to the ORCA Business Cards, ORCA Products, ORCA Websites, data, information, and any equipment, systems and services related to the ORCA program.
- 3.12 *Parties.* The Business Account and the Agencies (which include the Lead Agency) may be collectively referred to as "Parties."
- 3.13 *Primary Contact Person.* The individuals identified as the primary contact points for the Lead Agency and the Business Account, as listed in Attachment 2 or as modified from time to time.
- 3.14 *Product Block.* An ORCA system process that culminates in invalidating an ORCA Product without invalidating the card on which it is loaded.
- 3.15 *Transportation Services.* Those public transportation services provided by the Agencies that are specified in Attachment 1.

#### **4.0 PRICES AND PAYMENT TERMS**

- 4.1 The prices and payment terms applicable to this Agreement are specified in Attachment 1. Such terms shall include: (a) the amounts due for the Business Cards, Business Passport Product, and any other products, services and fees; (b) the timing of payments, and (c) the acceptable method of payment. Each order submitted by the Business Account for ORCA Business Cards and/or any ORCA Products will be subject to the provisions of this Agreement.
- 4.2 The Business Account's purchase of any Business Choice Products via the Business Account Website will be at the prices and terms in effect at the time of order. The Business Account is responsible for reviewing the prices in effect before submitting each order and shall be deemed to have agreed to the then-applicable prices by submitting the order.
- 4.3 Payment in full is due as specified in Attachment 1.
- 4.4 If for any reason payment in full is not received by the date due, if a payment is not honored due to non-sufficient funds (NSF) or if for any reason a payment is negated or reversed, the Lead Agency will notify the Business Account of the payment problem and, if full and clear payment is not received within ten (10) calendar days of such notification, the Lead Agency may:
  - 4.4.1 refuse to process new orders for ORCA Business Cards and block the loading of new ORCA Products by or for the Business Account;
  - 4.4.2 assess any late payment, NSF and collection fees to the maximum amount permitted by law;

- 4.4.3 initiate a Card Block or Product Block on the Business Cards issued to the Business Account, rendering them ineffective for use by the Cardholders, until such time as the Business Account pays the full amount due, including any late payment, NSF and fees, in a manner acceptable to the Lead Agency; and
- 4.4.4 suspend or terminate access rights to the Business Account's secured area of the website.
- 4.5 In addition to any other obligations it may have under this Agreement and at law, the Business Account agrees to pay to the Lead Agency any reasonable collection fees incurred in collecting amounts due from the Business Account.
- 5.0 PURCHASE, OWNERSHIP, DISTRIBUTION AND REPLACEMENT OF ORCA BUSINESS CARDS**
- 5.1 *Ordering ORCA Business Cards.* The Business Account shall order ORCA Business Cards via the ORCA Business Accounts Website, in accordance with the directions provided on that website, and shall make payment as provided in Attachment 1,. If additional cards are required, the Business Account may be required to pay the standard card fee and other applicable fees as specified in Attachment 1.
- 5.2 *Receipt and Ownership of ORCA Business Cards.* Upon actual or constructive receipt of the ORCA Business Cards it has ordered, the Business Account shall become the owner of the ORCA Business Cards. The Business Account shall be deemed to have constructively received all ordered ORCA Business Cards unless it notifies the Lead Agency of any non-delivery or incorrect delivery within thirty (30) days after the order was placed. If the Business Account notifies the Lead Agency that it has not received the ordered cards, the Lead Agency will ship a replacement order. If the Business Account subsequently receives the cards reported as missing, the Business Account is responsible for returning them to the Lead Agency.
- 5.3 *Storage and Risk of Loss.* The Business Account is responsible for the storage, distribution and use of the ORCA Business Cards issued to it. The Business Account bears the sole risk of any loss, damage, theft or unauthorized use of one of its cards, whether such card is held in its inventory or has been distributed for use. The Business Account is responsible for the cost of any use of its Business Cards until the effective date of a Card Block that may be initiated as provided below.
- 5.4 *Distance Based Transit Fare.* The Business Account is responsible for communicating to Cardholders that "distance based fares" are charged on some systems such as: Link light rail, and Sounder commuter rail systems. On distance based fare modes, when the Cardholder "taps on," the ORCA system will record the trip to the last stop on the line. When the Cardholder "taps off" at the end of the ride, ORCA will record the actual ride. The Business Account then will be charged the correct fare for the actual ride taken. If the Cardholder fails to "tap off", then ORCA will record a ride to the end of the line. The result of not "tapping off" is that the Business Account will be charged the largest fare for the ride even if a shorter ride was taken.
- 5.5 *Distribution of ORCA Business Cards.* The Business Account is responsible for distributing its Business Cards for use by its Eligible Business Cardholders. The Business Account remains the owner of all Business Cards it distributes but a cardholder may also purchase and load individual ORCA products on a Business Card and individually register the card. To enable Cardholders to register Business Cards as

provided in Section 6 below, the Business Account may not register, or allow anyone other than the Cardholder to register, the Business Cards that are issued under this Agreement.

The Business Account shall require that the Cardholder, as a condition of receiving a Business Card, is informed of the Cardholder Rules of Use, incorporated in this Agreement as Attachment 4 *ORCA Business Cardholder Rules of Use*, through your business' standard means of communicating policies.

The Business Account understands and agrees that it is solely responsible for implementation and enforcement of the Cardholder Rules of Use.

- 5.6 *Proof of payment.* The Business Account is responsible for notifying Cardholders that proof of payment must be made by tapping the ORCA Card on the card reader in the manner required by each Agency; otherwise, the Cardholder may be subject to a fine if the ORCA Card is not tapped, and the Cardholder will be personally responsible for any fines that may be imposed.
- 5.7 *Business Account Access to Personally Identifying Information.* If an individual Cardholder opts to register one of the Business Cards issued to the Business Account, any personally identifying information provided to the ORCA System (e.g. name, address, telephone number, and credit card number) will not be accessible by the Business Account. If the Business Account collects any personally identifying information about individuals to whom it has distributed Business Cards, the Business Account is solely responsible for its collection, use, storage and disclosure of such information.
- 5.8 *Card Blocks.* In the event a Business Card is determined to be lost or stolen or if a Cardholder is determined by the Business Account to be no longer eligible to use the card, the Business Account may initiate a Card Block via the Business Account Website to invalidate the subject Business Card. The Lead Agency may also initiate a Card Block or a Product Block as to any of the Business Account's Business Cards at the request of the Business Account, or at the sole discretion of the Lead Agency in accordance with Section 4.4, or if it is suspected that a card has been altered, duplicated, counterfeited, stolen or used by an ineligible Cardholder. Once initiated, a Card Block must be processed in the ORCA system and downloaded to all reader devices throughout the region. Until that occurs, there is the potential that the Business Passport Product and any E-purse value or other ORCA Products on the subject card will continue to be used. The Business Account, not the Agencies, remains responsible for all transactions, and any loss or costs arising there from, for forty-eight (48) hours after the Card Block was initiated.
- 5.9 *Restoration of Value After Card Block.* Following a Card Block, the Business Account may request the Lead Agency to restore value on a replacement of the blocked Business Card. An E-purse on a blocked card will be restored on the replacement card in approximately ten (10) calendar days after the replacement card is issued. The E-purse amount that remained on the lost or stolen card, forty-eight (48) hours after the Card Block was initiated in the ORCA system, will be restored to the replacement card via a remote revalue function. An E-purse on a blocked card will be restored on the replacement card on the eighth day after the card has been issued. The card must then be tapped to activate the E-purse value.

5.10 *Card Replacement.* The Business Account is responsible for ordering and paying for any new cards needed to replace Business Cards that for any reason cease to be available or suitable for use by the Cardholders under the program of the Business Account, including but not limited to, if the unavailability or unsuitability is caused by damage, abuse, loss, theft, Card Block, and end of useful life. Provided, however, and notwithstanding the exclusion of warranties in Section 14, if a Business Card malfunctions within twelve (12) months after it was delivered to the Business Account, it shall be replaced by the Lead Agency without additional charge to the Business Account if the malfunction was caused by a defect in design, material or workmanship and was not caused by misuse, an intentional act, negligence or damage, reasonable wear and tear excepted. The Business Account understands and agrees that to avoid the disruption and inconvenience caused by sporadic failures as its cards are used, it must plan for replacement of its Business Cards on a regular basis. As a condition of continuing under the Business Passport program, the Business Account agrees that: (a) it will retire all of its ORCA Business Cards at sometime within four years after they are issued by the Lead Agency to the Business Account; and (b) purchase replacement Business Cards at the then-applicable rate.

## **6.0 CARDHOLDER USE OF ORCA BUSINESS CARDS**

*Cardholder Privileges.* The Business Account understands and agrees that, although it remains the owner of ORCA Business Cards after distribution, the Cardholder has the following privileges in connection with the use of an ORCA Business Card.

- 6.1 The Cardholder may present an ORCA Business Card, loaded with a valid, applicable Business Passport or Business Choice Product, to an ORCA fare transaction processor as proof of payment of all or a portion of a required fare on a regular transportation service operated by one or more of the Agencies. (Provided, however, an ORCA Product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a Cardholder will be required to make other payment to the extent a fare is not covered by an ORCA Product.
- 6.2 The Cardholder may individually purchase ORCA Products and load them on the Business Card in addition to any ORCA Product loaded by the Business Account. Individual ORCA Products may be used to pay all or a portion of a required fare on a transportation service not covered by a Business Passport Product or Business Choice Product. (Provided, however, an ORCA Product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a Cardholder will be required to make other payment to the extent a fare is not covered by an ORCA Product.
- 6.3 The Cardholder may register his/her name and other contact information with the ORCA System and link such personal information to the serial number of the Business Card provided to him/her. Such registration does not give the Cardholder any ownership rights in the card but does give the Cardholder the right to access the ORCA Cardholder Website to view the card's transaction history and current stored value, to modify travel zone preferences, and to add retail products.
- 6.4 The Cardholder's personally identifying information is generally exempt from disclosure under the Washington Public Records Act (Chapter 42.56 RCW) as more specifically outlined in RCW 42.56.330(5).

## **7.0 NO RETURNS OR REFUNDS**

Except as otherwise provided herein or in Section 13.2, the Business Account understands and agrees that its purchases of Business Cards, and Business Passport Products and Business Choice Products purchased for such cards, are final and it is not entitled to any refunds. Provided, however, the Business Account may request a refund of the E-purse value remaining on a Business Card if the card is surrendered by the Business Account to the Lead Agency. Upon surrender of the subject Business Card, the Lead Agency shall initiate a Card Block and the refund processed approximately ten (10) calendar days after the Card Block was initiated. The E-purse amount refunded will be that which remained on the surrendered card forty-eight (48) hours after the Card Block was initiated in the ORCA system. A processing fee of ten dollars (\$10) may be payable by the Business Account to the Lead Agency for each refund that is processed, regardless of E-purse value or number of cards refunded. The Business Account, not the Lead Agency, is responsible for the refunding of such E-purse value, if any, to the individual Cardholder to whom the Business Card had been distributed.

## **8.0 BUSINESS ACCOUNT WEBSITE**

8.1 The Business Account Website is the primary means by which the Business Account shall purchase ORCA Business Cards, Business Passport and Business Choice Products, manage its Business Cards and obtain information about the use of said cards. As a condition of participation in the Business Passport program, the Business Account agrees that it will use the Business Account Website when it is available and that each access and use of said website shall be subject to the Terms of Use and Privacy Statement that are in effect and posted on the Business Account Website at the time of such access and use.

8.2 The Business Account understands and agrees that uninterrupted access to and use of the Business Account Website is not guaranteed and agrees that it will contact its representative at the Lead Agency by email or telephone if the website is not available.

8.3 At the time the Business Account enters into the ORCA program, the Lead Agency will provide a single password to the Business Account's Primary Contact, as specified in Attachment 2, to enable user access to the Business Account's secured area of the Business Account Website. The Business Account is required to change the temporary password to one of its own creation. The Business Account shall be solely responsible for the number and identity of those employees with whom the Business Account's password is shared. The Business Account is also solely responsible for complying with the security standards specified in Attachment 5, *ORCA Business Account Security Standards*, which is incorporated in this Agreement by this reference.

## **9.0 INFORMATION PROVIDED BY THE AGENCIES AND THE ORCA SYSTEM**

9.1 The Business Account understands and agrees that the data, reports or any information provided to it via the Business Account Website or otherwise, is and remains the sole property of the Agencies and nothing shall be construed as a transfer or grant of any copyright or other property interest in such data, reports or information. The Agencies hereby grant to the Business Account a non-exclusive license to use any data, reports or information provided by the Agencies, via the Business Account Website or otherwise, for any lawful purpose related to the administration of the transportation benefits program of the Business Account.

9.2 The ORCA System will record data each time an ORCA Business Card is presented to an ORCA device for fare payment and to load a product. Such transaction data includes,

but is not limited to, the date, time, and location (or route) of the transaction. The Business Account may routinely access such transaction data related to its Business Cards to the extent provided via the Business Account Website. Said website and its reports do not provide the Business Account Business Card transaction data linked to card serial numbers.

For the purpose of preventing fraud, the Primary Contact Person of the Business Account may submit a written request to the Lead Agency for transaction data related to a specific card number or for a card number linked to a specific transaction. Fraud is defined as intentional deception or misrepresentation by a person with knowledge that it will result in an unauthorized benefit to him, her, or some other person. The submittal is not intended to be used to request data for multiple cards or all cards managed by the Business Account.

The written request shall include the following:

- 9.2.1 Card number or the date, time and other known details about the specific transaction for which a card serial number is being requested;
- 9.2.2 Detailed statement as to why the information is germane to the prevention of fraud; and
- 9.2.3 The signature of the Primary Contact Person.

If the Lead Agency determines that the subject transaction(s) is linked to a Business Card issued to the Business Account, the Lead Agency will provide the Business Account with the card serial number linked to the requested transaction(s). The Business Account agrees that it will use such card serial number information only for purposes of enforcing the Rules of Use, as provided to the Cardholder. The Business Account must maintain its own records if it wishes to identify the card serial number issued to an individual.

## **10.0 PUBLIC RECORDS**

The Business Account understands and agrees that all records related to its participation in the ORCA System are public records under the Washington Public Records Act (Chapter 42.56 RCW) ("Act"), including but not limited to: (a) this Agreement and the sales activity hereunder; (b) the orders, communications, and any other information provided by the Business Account to the Lead Agency, the other Agencies or the ORCA System, whether provided via this website or otherwise and whether provided in hard copy or electronic form; (c) any communications, responses, requests, reports or information of any kind provided to the Business Account from the Lead Agency, the other Agencies or the ORCA System; and (d) all data, reports and information of any kind related to the loading of products on, and the use of, the Business Cards issued to the Business Account. As public records, these records will be made available for public inspection and copying upon request, unless the Lead Agency determines they are exempt from disclosure.

## **11.0 INDIVIDUAL USE OF BUSINESS CARD AFTER LEAVING A BUSINESS ACCOUNT**

The Business Account is encouraged to collect Business Cards from Cardholders who are no longer eligible for the Business Account's transportation benefits program. In any case, the Business Account is solely responsible for initiating a Card Block or Product Block in accordance with this Agreement to prevent any continued use of, and financial liability for, a card that had been distributed to a person who is no longer eligible.



## **12.0 ORCA SERVICES SUBJECT TO CHANGE**

The Agencies seek to continually improve and enhance the ORCA Services. With thousands of employers, schools, and other entities entering into business account agreements at varying dates in the year, the Agencies are unable to guarantee to each business account that the ORCA Services will not change during the term of its agreement. The Business Account understands and agrees that one or more ORCA Services may be changed, suspended or terminated from time to time without prior notice to, or agreement by, the Business Account, including but not limited to changes in the look, feel, content and functions of the Business Account Website. If the Business Account is dissatisfied with a change in the ORCA Services, however, it may terminate this Agreement for its convenience in accordance with the provisions of Section 13.2.

## **13.0 TERMINATION**

- 13.1 The Lead Agency may at any time terminate this Agreement if the Business Account fails to make timely and effective payment of all amounts due, or otherwise materially breaches the Agreement, or acts in manner indicating that it intends to not comply, or is unable to comply, with the Agreement. To effect such a termination for cause, the Lead Agency shall send email notice to the last known email address for the last known primary contact person of the Business Account describing the manner in which the Business Account is in default and the effective date of termination. If the basis for termination is a failure to perform that can be cured, the termination shall not take effect so long as the Business Account cures the default within ten (10) calendar days of the sending of the email notice. Upon the effective date of such termination, the Lead Agency may immediately terminate the website access privileges of the Business Account, block the Business Cards issued to the Business Account and decline to accept and fulfill any pending or new orders from the Business Account. In the event of such a termination for cause, the Business Account shall not be entitled to any refund of any amounts paid.
- 13.2 Either the Business Account or the Lead Agency may terminate the Agreement without cause and for its own convenience by sending the other party written or email notice at least thirty (30) days in advance of the effective date of the termination. Upon receipt of a notice of termination for convenience from the Business Account, the Lead Agency may, in its sole discretion, waive the advance notice period and immediately terminate the website access privileges of the Business Account, initiate a Card Block on the Business Cards issued to the Business Account, and decline to accept and fulfill any pending or new orders from the Business Account. In the event of such a termination for convenience and not cause, the amounts due under this Agreement shall be calculated by the Lead Agency. (The amounts due for the ORCA Passport Product and any optional products listed in Attachment 1 shall be the annual amounts due prorated for the number of months during which the Passport Product and optional products were valid for at least one day.) If the Business Account has not paid in full all of the amounts due under this Agreement as of the termination date, the Business Account shall immediately pay the remaining amount due. If the Business Account has paid more than all of the amounts due under this Agreement as of the termination date, the Business Account shall be entitled to a refund of the excess it has paid.
- 13.3 Notwithstanding any termination of the Agreement, the Business Account shall remain liable to satisfy and comply with all of its obligations under this Agreement and at law with regard to, or arising out of, any orders submitted or any of its acts or omissions

occurring prior to the effective date of the termination, including but not limited to paying all amounts due or incurred prior to the effective date of the termination and any fees, charges, collection costs or other costs arising from a failure to make timely and effective payment.

#### **14.0 EXCLUSION OF WARRANTIES**

- 14.1 ALL ORCA SERVICES PROVIDED ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ANY USE OF THE ORCA SERVICES IS AT THE BUSINESS ACCOUNT'S SOLE DISCRETION AND RISK.
- 14.2 BY WAY OF EXAMPLE, AND NOT LIMITATION, THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SPECIFICALLY DO NOT REPRESENT AND WARRANT THAT:
- A. THE BUSINESS ACCOUNT'S USE OF THE ORCA SERVICES WILL BE UNINTERRUPTED, TIMELY, FREE FROM ERROR AND OTHERWISE MEETING ITS REQUIREMENTS;
  - B. ANY INFORMATION OBTAINED BY THE BUSINESS ACCOUNT AS A RESULT OF USING THE ORCA SERVICES WILL BE ACCURATE AND RELIABLE; AND
  - C. ANY USE OF THE ORCA WEBSITES, INCLUDING BUT NOT LIMITED TO THE CONTENT OR MATERIAL DOWNLOADED FROM SAID WEBSITES, WILL BE FREE OF DEFECTS, VIRUSES, MALWARE, HACKS OR POTENTIALLY HARMFUL INTRUSIONS.
- 14.3 TO THE EXTENT PERMITTED BY LAW, THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO: ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; ANY WARRANTIES OF QUIET ENJOYMENT OR NON-INFRINGEMENT; AND ANY WARRANTIES CREATED BY TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.
- 14.4 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE AGENCIES OR THE ORCA SYSTEM SHALL REVISE OR CREATE ANY WARRANTY.

#### **15.0 NOTICES**

- 15.1 Any notice required to be given under the terms of this Agreement shall be directed either by email or regular mail to the Parties' Designated Representatives, as specified in Attachment 2, or to the last person and address provided by a Party in accordance with Section 15.2.
- 15.2 Each Party shall immediately notify the other Parties of any changes to its Designated Representatives' contact information. The Business Account shall also immediately notify the Lead Agency of any changes in any other information provided in its application.

## **16.0 FORCE MAJEURE**

The Agencies and each of them shall be relieved of any obligations under this Agreement to the extent they are rendered unable to perform, or comply with such obligations as a direct or indirect result of a force majeure event, or any other circumstance not within such party's control, including, but not limited to, acts of nature, acts of civil or military authorities, terrorism, fire or water damage, accidents, labor disputes or actions, shutdowns for purpose of emergency repairs, or industrial, civil or public disturbances.

## **17.0 APPLICATION OF AGENCY FARES AND OTHER POLICIES**

The purchase, distribution and use of Business Cards and ORCA Products by the Business Account and its Cardholders, and access to and use of the ORCA websites, shall be subject to all applicable federal, state and local law, regulations, ordinances, codes and policies, including but not limited to the ORCA Terms of Use and Privacy Statement (posted on the ORCA websites and available in printed form upon request to the Lead Agency), and the Agencies' respective fares, transfer rules, codes of conduct and other operating policies and procedures.

## **18.0 PROHIBITED DISCRIMINATION**

The Business Account shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the administration of its transportation benefits program, the provision of ORCA Business Cards and ORCA Products, or the performance of any acts under this Agreement. The Business Account shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination.

## **19.0 COMPLIANCE WITH APPLICABLE LAW**

The Business Account shall be solely responsible for compliance with all applicable federal, state and local laws, regulations, resolutions and ordinances, including, but not limited to, any provisions relating to the Business Account's provision of compensation, benefits or services to employees or others (e.g. including, but not limited to, transportation fringe benefits) and any reporting, tax withholding, or other obligations related thereto. The Business Account expressly acknowledges and agrees that it has not relied on any representations or statements by the Agencies and will not rely on them to provide any legal, accounting, tax or other advice with regard to the Business Account's provision of compensation, benefits or services to employees or others (e.g. including, but not limited to, transportation fringe benefits) and any reporting, withholding or other obligations related thereto.

## **20.0 LEGAL RELATIONS**

20.1 *No Partnership, Agency or Employment Relationship Formed.* The Business Account and the Agencies are independent parties and nothing in this Agreement shall be construed as creating any joint venture, partnership, agency or employment relationship between and among them or their respective employees. Without limiting the foregoing, the Business Account understands and agrees that none of its employees or agents shall be deemed employees or agent, for any purpose, of any of the Agencies and the Business Account is solely responsible for the acts of its agents and employees and their compensation, wages, withholdings and benefits.

### **20.2 LIMITATION ON LIABILITY**

- A. THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SHALL NOT BE LIABLE FOR, AND THE BUSINESS ACCOUNT HOLDS EACH AGENCY

HARMLESS FROM, ANY LOSS OR DAMAGE ARISING OUT OF OR RELATED TO:

1. ANY RELIANCE PLACED BY THE BUSINESS ACCOUNT ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY INFORMATION PROVIDED TO THE BUSINESS ACCOUNT BY OR THROUGH THE ORCA SERVICES;
  2. ANY CHANGES TO THE ORCA SERVICES OR THE TEMPORARY OR PERMANENT CESSATION OF ANY SUCH SERVICES (OR FEATURES WITHIN A SERVICE);
  3. THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY INFORMATION MADE AVAILABLE TO THE BUSINESS ACCOUNT, OR GENERATED BY THE USE OF THE ORCA SERVICES UNDER THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, THE USE OF THE ORCA BUSINESS CARDS ISSUED UNDER THIS AGREEMENT;
  4. THE BUSINESS ACCOUNT'S FAILURE TO PROVIDE THE LEAD AGENCY WITH ACCURATE ACCOUNT INFORMATION; AND
  5. THE BUSINESS ACCOUNT'S FAILURE TO KEEP INFORMATION SECURE AND CONFIDENTIAL.
- B. THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SHALL NOT BE LIABLE FOR, AND THE BUSINESS ACCOUNT HOLDS EACH AGENCY HARMLESS FROM, ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES INCURRED BY THE BUSINESS ACCOUNT UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, LOSS OF PRIVACY, LOSS OF DATA, LOSS OF GOODWILL OR BUSINESS REPUTATION, WHEN SUCH DAMAGES ARISE OUT OF, OR ARE RELATED TO, THIS AGREEMENT OR THE ORCA SERVICES, WHETHER OR NOT ONE OR MORE AGENCIES HAS BEEN ADVISED OF, OR SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF ANY SUCH DAMAGES ARISING.
- C TO THE EXTENT ONE OR MORE OF THE AGENCIES INCURS ANY LIABILITY FOR A BREACH OF THIS AGREEMENT, OR ANY DUTY RELATED TO THE ORCA SERVICES, AND SUCH LIABILITY THAT IS NOT EXCLUDED UNDER THE TERMS OF THIS AGREEMENT, THE EXCLUSIVE, AGGREGATE REMEDY AGAINST THE LEAD AGENCY AND EACH OTHER AGENCY WILL BE, AT THE OPTION OF THE APPLICABLE AGENCIES: (A) THE CORRECTION, SUBSTITUTION OR REPLACEMENT OF ALL OR PART OF THE ORCA SERVICES GIVING RISE TO THE BREACH, OR (B) A REFUND OF THE AMOUNT PAID BY THE BUSINESS ACCOUNT FOR THE ORCA SERVICE CAUSING THE DAMAGE, THE AMOUNT OF WHICH WILL NOT EXCEED THE DAMAGES (OTHER THAN THOSE EXCLUDED ABOVE) ACTUALLY INCURRED BY THE BUSINESS ACCOUNT IN REASONABLE RELIANCE.

THE DAMAGE EXCLUSIONS AND LIMITATIONS ON LIABILITY IN THE AGREEMENT SHALL APPLY EVEN IF ANY REMEDY FAILS FOR ITS ESSENTIAL PURPOSE.

- 20.3 *No Waiver.* The Business Account agrees that if the Lead Agency does not exercise or enforce any legal right or remedy which is contained in the Agreement or under applicable law, this will not be taken to be deemed to be a waiver or modification of the Lead Agency's rights and remedies, and that those rights or remedies will still be available to the Lead Agency.
- 20.4 *Governing Law and Forum.* This Agreement and all provisions hereof shall be interpreted and enforced in accordance with, and governed by, the applicable law of the State of Washington and of the United States of America without regard to its conflict of laws provisions. The exclusive jurisdiction and venue for conducting any legal actions arising under this Agreement shall reside in either the Federal District Court or the State of Washington Superior Court, as applicable, that is located in the county in which the Lead Agency's primary administrative office is located. The Business Account hereby consents to personal jurisdiction and venue in said courts and waives any right which it might have to conduct legal actions involving the Agencies in other forums.
- 20.5 *Attorneys' Fees and Costs.* In the event of litigation between the parties related to this Agreement, the Court is authorized to award the substantially prevailing party its costs, fees and expenses including reasonable attorney fees to the extent authorized by the Court and permitted by applicable law.
- 20.6 *Survival.* Sections 4, 5, 9, 14 and 20 shall survive and remain effective notwithstanding any termination of this Agreement.
- 20.7 *Use of ORCA name and logos.* The Business Account understands and agrees that the "ORCA" name and logos are trademarked and that it will not copy or use them and any other trade names, trademarks, service marks, logos, domain names, and other distinctive features or intellectual property of the Agencies without written permission. The Agencies understand and agree the Business Account name and logo may be trademarked and that it will not copy or use them and any other trade names, trademarks, service marks, logos, domain names, and other distinctive features or intellectual property of the Business Account without written permission.

## **21.0 SUCCESSORS AND ASSIGNS**

This Agreement and all terms, provisions, conditions and covenants hereof shall be binding upon the parties hereto, and their respective successors and assigns; provided, however, no Party may assign or delegate the duties performed under this Agreement without the written agreement by the Lead Agency, the Business Account and the assignee.

## **22.0 ENTIRE AGREEMENT AND WRITTEN AMENDMENTS**

This Agreement constitutes the entire agreement between the Business Account and the Lead Agency, on behalf of all Agencies, related to the Business Account's use of and access to ORCA Services (but excluding any services which Lead Agency may provide under a separate written agreement), and completely replaces and supersedes any prior oral or written representations or agreements in relation to fare media consignment and sales or to ORCA Services. No oral agreements or modifications will be binding on the parties and any changes shall be effective only upon a written amendment being signed by the parties.

**23.0 SEVERABILITY**

In the event any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable or invalid, then the meaning of that provision shall be construed, to the extent feasible, to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of the Agreement which shall remain in full force and effect unless the provisions that are invalid and unenforceable substantially impair the value of the entire Agreement to any party.

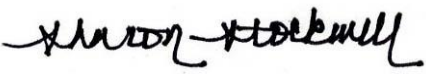
**24.0 AUTHORITY TO EXECUTE**

Each party to this Agreement represents and warrants that: (i) it has the legal power and authority to execute and perform this Agreement and to grant the rights and assume its obligations herein; and (ii) the person(s) executing this Agreement below on the party's behalf is/are duly authorized to do so, and that the signatures of such person(s) is/are legally sufficient to bind the party hereunder.

**25.0 COUNTERPARTS**

This Agreement may be executed in two (2) counterparts, each one of which shall be regarded for all purposes as one original.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

BUSINESS ACCOUNT	LEAD TRANSPORTATION AGENCY
BY: _____ Gary Buchanan  Title: <u>Human Resources Director</u>  Business Account Name: <u>City of Tacoma</u>  Date: _____	BY: <u></u> Sharon Stockwell  Title: <u>Senior Employer Services Coordinator</u>  Agency: <u>Pierce Transit</u>  Date: <u>January 30, 2018</u>

**CITY OF TACOMA**

**PIERCE TRANSIT**

Approved:

\_\_\_\_\_  
Elizabeth Pauli, City Manager

\_\_\_\_\_  
Sue Dreier, Chief Executive Officer

\_\_\_\_\_  
Gary Buchanan, Human Resources Director

3701 96<sup>th</sup> Street SW, Lakewood, WA 98499

Approved:

\_\_\_\_\_  
Andrew Cherullo, Director of Finance

Tax ID: 91-1103747

Approved as to Form and Legality:

\_\_\_\_\_  
Deputy City Attorney

Attest:

\_\_\_\_\_  
Doris Sorum, City Clerk

Approved:

\_\_\_\_\_  
Saada Gegoux, Risk Manager

**ATTACHMENT 1  
PRODUCTS, PRICING AND TERMS - BUSINESS PASSPORT FLAT RATE**

**City of Tacoma**

Passport Proposal Date: December 19, 2017  
 Program Term: March 1, 2018 - February 28, 2019  
 Type: Renewal - Year 9  
 BA ID: 2300

**Proposal Summary**

ORCA Passport for Total Number of Eligible Employees		2,707
Regular bus services on Pierce Transit, Community Transit, Everett Transit, Kitsap Transit, Metro Transit and Sound Transit		
Regular service on Sound Transit Link light rail, Sounder commuter train (including Rail Plus)		
Regular service on Seattle Streetcar		
Regular service on King County Water Taxi (Vashon and West Seattle routes)		
Regular service on Kitsap Local Ferries and Kitsap Fast Ferries		
Emergency ride home service		<b>Pierce Transit ERH</b>
Monthly vanpool fare subsidy on PT, CT, KT, and Metro vans		<b>100% - Up to IRS limit</b>
Vanpool participant pays the difference between subsidy and actual fare for all vanpool/vanshare use.		
Monthly vanshare fare subsidy on PT, CT, KT and Metro vans		<b>\$35.00</b>
Payment schedule		<b>1 payment; net 30 days</b>
Community Transit	+	\$1,123.56
Vanpool and vanshare: <i>initial deposit</i>	+	\$0.00
Everett Transit	+	\$2.40
Kitsap Transit	+	\$16.32
Vanpool and vanshare: <i>initial deposit</i>	+	\$0.00
Metro Transit	+	\$6,835.56
Vanpool and vanshare: <i>initial deposit</i>	+	\$11,600.00
King County Water Taxi	+	\$0.00
Pierce Transit	+	\$29,595.48
Vanpool and vanshare: <i>initial deposit</i>	+	\$324,000.00
Emergency Ride Home Provided free Year 9	+	\$0.00
Administration fee	+	\$2,500.00
Card fee - equals current fee at the time of card purchase	+	\$0.00
Card logo fee - no logo requested	+	\$0.00
Sound Transit	+	\$24,548.16
Total Transit Cost	+	\$62,121.48
Total Vanpool Initial Deposit	+	\$335,600.00
Total King County Water Taxi Cost	+	\$0.00
Total Other Costs	+	\$2,500.00
<b>Total Program Cost</b>	<b>=</b>	<b>\$400,221.48</b>
Annual <b>Transit</b> Rate per Employee	=	\$22.95
Maximum Annual Employee Co-Pay	=	\$11.47
(Employees may contribute up to 50% of the Annual Rate per Employee)		
Maximum Monthly Employee Co-Pay	=	\$0.96
Monthly Rate for One Additional Eligible Employee	=	\$1.92

\* Additional card orders can be ordered at the standard card fee only.  
 \* Business Choice products purchased by the Business Account will be prepaid by credit card at the prevailing retail rates.  
 \* Vanpool requires full subsidy payment for all vanpoolers. After initial deposit is exhausted, Company may receive quarterly invoices for any additional use.



### **Emergency Ride Home**

Emergency Ride Home service provides up to six rides per employee per 12 month period. See Attachment 6.

### **Vanpool and Vanshare Service**

The vanpool/vanshare subsidy dollar amounts specified above are based on the estimated usage by Eligible Employees of each included Agency's vanpool/vanshare services.

- If the vanpool/vanshare dollar amount specified above is less than the amount due for actual usage by Eligible Employees for any of the included Agency's vanpool/vanshare services under this Agreement, the provider Agency may invoice the Business Account for the additional use.
- If the Business Account enters into a successor agreement to this Agreement, the difference between the specified amount above and the actual amount due each included Agency under this Agreement will be calculated. An overpayment under this Agreement will be subtracted from the amount specified in the successor agreement. A deficit under this Agreement will be added to the amount specified in the successor agreement, if the provider Agency did not submit a supplemental invoice.
- If this Agreement is terminated or expires without the Business Account entering into a successor agreement, the difference between the specified amount above and the actual amount due each included Agency under this Agreement will be calculated. An overpayment under this Agreement will be credited against any amount still due from the Business Account, or reimbursed by the provider Agency if none is still due. A deficit under this Agreement shall become immediately due and payable by the Business Account to the provider Agency.

**ATTACHMENT 2**

**DESIGNATED REPRESENTATIVES**

	<b>BUSINESS ACCOUNT - Primary</b>	<b>LEAD AGENCY – Primary</b>
Name	Cindy Farmer	Sharon Stockwell
Title	Human Resources Specialist	Senior Employer Services Coordinator
Address	City of Tacoma	Pierce Transit
	747 Market Street, #1420	PO Box 99070
	Tacoma, WA 98402	Lakewood, WA 98496-0070
Phone	253.573.2311	253.581.8112
Cell Phone	N/A	N/A
E-Mail	cfarmer@cityoftacoma.org	sstockwell@piercetransit.org
	<b>BUSINESS ACCOUNT - Secondary</b>	<b>LEAD AGENCY - Secondary</b>
Name	Wendy Hobson	Karen Henderson
Title	Office Manager	Employer Services Coordinator
Address	747 Market Street, #1336	PO Box 99070
	Tacoma, WA 98402	Lakewood, WA 98496-0070
Phone	253.591.2059	253.581.8008
Cell Phone	N/A	N/A
E-Mail	whobson@cityoftacoma.org	kahenderson@piercetransit.org

**ATTACHMENT 3**

**ELIGIBLE BUSINESS CARDHOLDERS**

**Definition and Number of Eligible Participants**

<b>Definition of Eligible Participants</b>	All benefits eligible employees
<b>Number of Eligible Participants</b>	Total eligible employees - 2707



**ORCA BUSINESS CARDHOLDER RULES OF USE**

As a Business Account Cardholder, I agree to the following:

1. I acknowledge that the intent of my employer issued ORCA card is to provide transportation to and from work and commuting while on City business. I will use my ORCA Business Card for my own transportation only. I will not transfer, loan or give my ORCA Business Card to any other person. I understand that misuse of this benefit may result in disciplinary action up to and including termination.

2. I will keep my ORCA Business Card secure and in good condition. I will immediately report a lost, stolen, or damaged ORCA Business Card to City of Tacoma Human Resources at 253-591-5400.

I understand a lost or damaged ORCA Business Card will be replaced only once per year at a charge of \$10.00. A defective ORCA Business Card will be exchanged for an active one free of charge.

3. I will return my ORCA Business Card upon request or when I leave my employment with the City of Tacoma. If I do not return my ORCA Business Card, I understand that it will be blocked for further use on transportation services provided me by my employer.

4. I understand that the ORCA Business Card is valid for the following services provided by my employer:

A. 100% of transit fares on regularly scheduled transportation service on Community Transit, Everett Transit, Kitsap Transit, Metro Transit, Pierce Transit, & Sound Transit.

B. Up to IRS limits for subsidy for vanpool fares on participating transit agencies.

C. Up to IRS limits for subsidy for vanship/vanlink fares on participating transit agencies.

D. I understand that the ORCA Business Card products are not valid fare payment for services on any non-participating ORCA agencies (i.e. Thurston County's Intercity Transit, State Ferry Systems).

5. I understand that I am responsible to pay additional fares required for services not covered, or not fully covered, by my employer provided benefits.

6. I understand that any additional ORCA Products I load onto my ORCA Business Card become the property of my employer, and any refund of such products will be made by my employer according to its refund policy.

7. I understand the ORCA system will record data each time I use my ORCA Business Card. Data will include the date, time and location of the card when it is presented. I understand this data is owned by the ORCA Agencies and is accessible to my employer.

8. I understand that the ORCA Card must be "tapped" on a card reader to show proof of fare payment or issuance of a valid fare. Merely showing the ORCA Card on a bus, train, ferry or light rail vehicle does not constitute proof of fare payment or issuance of a valid fare. I will be subject to a fine if the ORCA Card is not "tapped," and I understand I will be personally responsible for any fines that may be imposed.

9. I understand that for the correct fare to be recorded, I must "tap" off on a card reader when exiting some transit systems. For example, I must "tap" off when exiting from a Sounder train or Link light rail.

I acknowledge the receipt of my ORCA Business Card, and understand and agree to the terms stated above on using the ORCA Business Card.

Employee's Signature: _____	Date: _____
Employee's <b>Printed</b> Name: _____	
Employee Number: _____	ORCA Card Serial #: _____

Issuing HR Staff Member _____
-------------------------------

Rules of use subject to change

**ATTACHMENT 5**  
**ORCA BUSINESS ACCOUNT SECURITY STANDARDS**

**1.0 Application Security**

- 1.1 At the time the Business Account enters into the ORCA program, the Lead Agency will provide a single Business Account user id and temporary password to the Business Account's Primary Contact (as specified in Attachment 2, *Designated Representatives*, to enable access to the Business Account's area of the Business Account Website.
- 1.2 The Business Account shall immediately change the temporary password to a strong password that meets the following criteria:
- a. Length - At least eight (8) characters in length or the maximum length permitted by the ORCA system, whichever is shorter.
  - b. Elements - Contains one each of at least three (3) of the following four (4) elements.
    - 1. English upper case letters (A, B, C...)
    - 2. English lower case letters (a, b, c...)
    - 3. Westernized Arabic numbers: 0, 1, 2...9
    - 4. Special characters: (@, #, %...)
- 1.3 The Business Account shall restrict access to the ORCA Business Account Website by providing its user id and password to only the employee(s) who have a business "need to know" and who are authorized by the Business Account as "system user(s)".
- 1.4 Access to the ORCA Business Account Website is restricted to the purpose of authorized administrative support for the ORCA Business Account program
- 1.5 The Business Account's password shall be changed at least quarterly but also immediately upon (a) a system user leaving the Business Account's employment or otherwise losing his/her status as an authorized user; and (b) the Business Account learning that the password has been obtained by unauthorized persons or entities.
- 1.6 The Business Account's Primary Contact will review security policies and guidelines with system users at least quarterly.

**2.0 Physical Security**

- 2.1 The Business Account shall require system users, when not at their workstations, to log off the Business Account Website, or lock their screen using a password protected screen-saver in order to prevent unauthorized access.
- 2.2 ORCA card stock shall be kept in a secure/locked location with access limited to those administering the program.
- 2.3 The Business Account shall require its employees to keep printed reports containing account information in a secure location.

**3.0 Incident Management**

- 3.1 The Business Account shall report any security incident or suspected incident immediately to the Lead Agency. Examples of possible security incidents would be: introduction of computer viruses, unauthorized transactions or blocked cards, or lost or stolen card stock.

## **ATTACHMENT 6**

### **Pierce Transit Emergency Ride Home**

PIERCE TRANSIT'S Emergency Ride Home (ERH) program guarantees payment for taxi fares or charges by a Transportation Network Company (herein referred to as "TNC") incurred by EMPLOYER'S eligible employees for emergency rides taken in accordance with the terms set forth below.

#### **Eligible Employees**

- ◆ ERH serves individual employees on days they use a non-drive-alone commute option and who are participants in the EMPLOYER'S regulated or voluntary Commute Trip Reduction (CTR) program.

#### **Approved Commute Options**

Eligible employees must have commuted from their principal residence to the EMPLOYER'S work site by one of the following approved commute mode options: bus, train, carpool, vanpool, walk-on or bicycle-on ferry, bicycle or walk.

#### **Eligible Reasons for Using ERH**

An eligible employee may receive a ride under ERH from the work site to approved destinations, if approved by the EMPLOYER'S Program Coordinator, under the following conditions:

- ◆ Unexpected illness of the employee or member of the employee's family that necessitates leaving work.
- ◆ Unexpectedly working late at the request of a supervisor. ("Unexpectedly" means the employee is requested to work late on the day of the request, without prior knowledge.)
- ◆ Missed connections with the planned ride home due to an unexpected change in the schedule of others (e.g., carpool driver had to leave for an emergency).
- ◆ Other approved emergency situations that occur during the workday.

#### **Non-Eligible Reasons for Using ERH**

- ◆ Pre-scheduled overtime, doctor appointments or other appointments.
- ◆ Business related travel.
- ◆ Working late with at least one day's prior notice.
- ◆ Any trip for which alternate transportation could have been arranged in advance.
- ◆ Trips to the hospital in place of ambulance service (in the event of employee injury or illness).
- ◆ Transportation to a doctor or hospital resulting from an on-the-job injury. Refer instead to your EMPLOYER'S procedures for worker's compensation incidents. ERH transportation service is not meant to replace an EMPLOYER'S legal responsibility under workers' compensation regulations.
- ◆ Non-emergency side trips.
- ◆ Transportation beyond the employee's usual commute ferry terminal.
- ◆ Employee layoff or termination.
- ◆ Inclement weather.
- ◆ The individual employee has already met trip limits for the year.

#### **Eligible Destinations**

An eligible employee may receive a ride under ERH from the work site to the following destinations, if approved by the EMPLOYER'S Program Coordinator:

- ◆ To the employee's principal place of residence.
- ◆ To the employee's personal vehicle (e.g., park & ride lot, daycare, carpool partner's home).
- ◆ To the employee's usual commute ferry terminal.
- ◆ To a medical provider.
- ◆ To an intermediate stop if it meets the criteria set forth below.

#### **Intermediate Stop**

An eligible employee may receive a ride under the ERH Program from the work site to an intermediate stop and then on to an eligible destination if approved by the EMPLOYER'S Program Coordinator. An intermediate stop is permitted only if it is directly related to the emergency and is arranged in advance by the EMPLOYER'S Program

Coordinator. An example of an intermediate stop would be the need to pick up a sick child at school before traveling to the eligible employee's home or the need to stop at an ATM in order to pay for the trip.

### **ERH Program Payment**

Grant funding shall cover trip costs up to \$1000 per employer per year or until allocated funding is exhausted, whichever comes first. EMPLOYER'S payment for ERH services once that funding is exhausted will be for actual trip costs for its employees, payable in advance by a quarterly deposit. PIERCE TRANSIT shall invoice the EMPLOYER for this deposit based on previous use. EMPLOYER or employee is responsible for trip payment at the time the trip is made. PIERCE TRANSIT shall reimburse the metered fare amount of an EMPLOYER'S Program Coordinator-authorized ERH ride up to \$100, as defined herein, for a one-way trip. Employees are responsible for any gratuities and any additional costs or surge pricing over the \$100 cap.

### **EMPLOYER'S Program Coordinator**

EMPLOYER shall designate as many Program Coordinators as necessary to administer and perform the necessary ERH program tasks as set forth herein.

### **Number of ERH Trips per Eligible Employee**

EMPLOYER shall ensure that each individual eligible employee is limited to six (6) trips per twelve (12) month period, commencing on initial effective date of the EMPLOYER's ORCA Passport Agreement.

### **Process**

To access ERH rides, an eligible employee shall contact the EMPLOYER'S Program Coordinator and supply the following information prior to trip approval.

- ◆ Commute option mode used by eligible employee on day of request
- ◆ Reason necessitating the ERH ride, along with final destination and justification for any identified intermediate stop.
- ◆ EMPLOYER'S Program Coordinator will ensure that the commute option mode, reason, intermediate stop, and destination meet eligibility requirements.
- ◆ Once the EMPLOYER'S Program Coordinator approves, the eligible employee may call any taxi provider or TNC in Pierce County to arrange for the trip.
- ◆ Once the eligible employee takes and pays for the ERH ride, the eligible employee shall provide a receipt for the ride to the EMPLOYER'S Program Coordinator.
- ◆ EMPLOYER'S Program Coordinator shall forward the completed ERH Use Verification form and the receipt to PIERCE TRANSIT at the end of each month for reimbursement.

### **Program Abuse**

PIERCE TRANSIT reserves the right to investigate and recover costs from and/or disqualify an EMPLOYER for intentional abuse of the ERH program by eligible employees. Program abuse is defined as, but not limited to, taking trips for inappropriate reasons, unauthorized destinations and intermediate stops, pre-scheduled appointments not defined above and failure to meet an ERH program service provider. PIERCE TRANSIT shall have the right to recover costs from and/or disqualify an EMPLOYER for its employees' abuse of the ERH Program. PIERCE TRANSIT shall also have the right to recover costs from and/or disqualify an EMPLOYER who knowingly, willingly or intentionally violates the terms of this Agreement by authorizing ineligible or inappropriate trips or failing to fulfill their responsibilities as described in this Agreement.

### **Pierce Transit Contacts**

Sharon Stockwell  
253.581.8112  
sstockwell@piercetransit.org

Karen Henderson  
253.581.8008  
kahenderson@piercetransit.org

### **Indemnification**

EMPLOYER agrees that PIERCE TRANSIT is not responsible for providing transportation services under this ERH program. EMPLOYER further agrees that PIERCE TRANSIT makes no guarantee or warranty as to the availability, accessibility, quality or reliability of taxi service or a TNC and that PIERCE TRANSIT'S sole obligation under the

program is to make payment for trips actually taken in accordance with the terms of this Agreement. EMPLOYER agrees it shall make no claims of any kind or bring any suits of any kind against PIERCE TRANSIT for damages or injuries of any kind arising out of or in any way related to the ERH program or services provided thereunder. Without limiting the foregoing and by way of example only, the EMPLOYER agrees that PIERCE TRANSIT shall not be liable for any injuries or damages caused by failure of a taxi or a TNC to provide a ride due to negligence, intentional acts or causes beyond the taxi’s or TNC’s control, including but not limited to incidence of fire, flood, snow, earthquake or other acts of nature, riots, insurrection, accident, order of any court or civil authority, and strikes or other labor actions.

**Termination**

If EMPLOYER fails to perform in the manner called for in this Agreement or if EMPLOYER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within ten (10) days written notice thereof, PIERCE TRANSIT may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on EMPLOYER setting forth the manner in which EMPLOYER is in default. Either party may terminate this Agreement, without cause, by providing at least thirty (30) days written notice to the other party. EMPLOYER shall submit final payment reports for any ERH rides incurred prior to termination of this Agreement within 30 days after the termination date; failure to submit such requests within their period shall relieve PIERCE TRANSIT of any obligation to make such reimbursement. This Agreement will continue in force until terminated by either party.



# SAMPLE ERH USE VERIFICATION



To be completed by Employer’s Program Coordinator		
Date:		
Employee Name:		
Home Address:		
City & Zip Code:		
Company Name:		
Reason Trip Requested:		
Check the commute option used the day of ERH:	<input type="checkbox"/> Carpool Sounder Train Walk-On Ferry	<input type="checkbox"/> Vanpool Walk Bike-On Ferry
	<input type="checkbox"/> Bus Bike	
Pickup Address:		
Intermediate Stop & Address if needed: ( if none write N/A. otherwise indicate if it’s a school, pharmacy, daycare, ATM, etc )		
Program Coordinator Name & Signature:		
Fare:	Mileage:	

For a supply of ERH Use Verification forms contact, Karen Henderson at 253.581.8008.