

Employer Program Distribution Agreement

Explanatory Note

This Employer Program Distribution Agreement (“Agreement”) is a contract between **Your Company Name and Address** (hereinafter the “Company”) and **Cubic Transportation Systems, Inc.** at 1800 Sutter Street, Suite 900, Concord CA 94520, USA, (hereinafter “Cubic”) that is the operating company for the Clipper_{SM} Program.

Please carefully read the terms of this Agreement outlined below. Please check the box at the end of this Agreement to accept the terms and activate your Company account. By clicking to approve this Agreement with Cubic you agree to be bound by the terms of this Agreement.

Cubic reserves the right to change the terms of this Agreement and any associated policies at any time by providing written notice on the Clipper_{SM} Web site at www.clipperdirectbenefits.com. Company will be deemed to have received such notice thirty (30) days after posting of that notice on the Clipper_{SM} Web site. The Company agrees to all changes when it places an order under this program.

Recitals

- A Cubic operates the Clipper_{SM} System on behalf of the Metropolitan Transportation Commission, the Clipper_{SM} Issuer.
- B The Clipper_{SM} System allows a single type of Extended Use Smart Card, the Clipper_{SM} Card, to be used in various Transit Operator equipment that is part of the Clipper_{SM} System in the San Francisco Bay Area.
- C The Company is an employer that wishes to implement and operate an employer transit benefit distribution program in the San Francisco Bay Area for the benefit of its Employees.
- D Cubic has agreed to provide the Company with Clipper_{SM} Products via the Clipper_{SM} Program for its employer program under the terms of this Agreement.

1. Definitions and Interpretation

1.1 In this Agreement:

Add Value Machine means a standalone machine that does not have an operator, which holders of Clipper_{SM} Cards can use to add value to their Clipper_{SM} Card.

Active Employee means an Employee of the Company who has been designated by the Company as eligible for participation in the Employer Program by the addition of the Employee's information to the Clipper_{SM} Direct Benefits website.

Benefit Month means the month in the Term in which a Program Benefit becomes effective.

Business Day means a weekday on which banks are open for business in California, excluding a Saturday, Sunday or California public holiday.

CID2 means a stationary stand alone device through which holders of Clipper_{SM} Cards can tag their Clipper_{SM} Cards in order to pay for a specific transit ride, or to collect transit benefits.

CID3 means a device integrated into a faregate through which holders of Clipper_{SM} Cards can tag their Clipper_{SM} Card in order to pay for a specific transit ride or to collect transit benefits.

De-registration Fee is a fee Cubic charges to the Employer when the Employer chooses to leave the program. The fee is based on the number of Active Employees in the program.

Designated Bank Account is the bank account designated by Cubic to which all money payable for the Program Benefits and program service fees will be wire transferred.

Designated Merchant Locations mean locations that will be listed on the Clipper_{SM} website where the Employees can purchase Clipper_{SM} Cards from third parties.

E-cash is data stored on a Clipper_{SM} Card that represents a cash value that may be used as payment for public transit provided by Transit Operators.

Employee is an employee of the Company who receives Program Benefits.

Employer Program is the program which operates under this Agreement whereby Cubic means operates the program under which Employees may use pre-tax dollars to purchase Clipper_{SM} transit value.

Internal Revenue Code is the main body of domestic statutory tax law of the United States organized topically, including laws and regulations covering the tax treatment of employer-provided fringe (including transportation) benefits.

License Agreement means the agreement set out on the Clipper_{SM} website that outlines the conditions of use of the Clipper_{SM} Smart Card by each Employee. **The refund provisions of that Agreement do not apply to this program, if they are in conflict with the provisions in this Agreement.**

Load/Loading is the function of adding a Clipper_{SM} Product to a Clipper_{SM} Card.

Metropolitan Transportation Commission or MTC is the metropolitan planning organization for the San Francisco Bay Area.

Program Benefit means the Loading by Cubic of Clipper_{SM} Products to an Employee's Clipper_{SM} Card under the Employer Program.

Smart Card means a plastic card about the size of a credit card, with an embedded microchip that can be loaded and reloaded with data representing a monetary value and rights to goods or services.

Stored Ride is data stored on a Clipper_{SM} Card that permits an Employee to take one trip on public transportation in operation in The San Francisco Bay Area operated by a specific Transit Operator participating in the Clipper_{SM} system.

Term means the duration of this Agreement as set out in clause 6.1.

The San Francisco Bay Area refers to counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

Ticket Operating Terminal means a terminal at which Transit Operator personnel can sell or add value to Clipper_{SM} Cards.

Transit Operator means one of the various public transportation agencies in the San Francisco Bay Area that operates public transport which is participating in the Clipper_{SM} System.

Clipper_{SM} is a registered trade mark of MTC for the Clipper_{SM} System.

Clipper_{SM}Card is the Smart Card onto which Clipper_{SM} Products can be loaded, and includes the Smart Card, any part or component of it, and all applications, software and programs on the microchip on the Smart card.

Clipper_{SM} Device is a patron device on a vehicle, a CID2, a CID3, a Clipper_{SM} Retail Unit, an Add Value Machine, a Ticket Vending Machine, Clipper_{SM} Ticket Vending Machine or a Ticket Operating Terminal

Clipper_{SM} Products means Stored Rides, Periodic Passes, E-cash and data stored on a Clipper_{SM} Card that represents any other rights to use transit services that form part of the Clipper_{SM} System.

Clipper_{SM} Program means a unified fare collection and transfer system for the Transit Operators serving the people of the San Francisco Bay Area.

Clipper_{SM} Retail Unit means a point of sale device provided to certain merchants that is used to sell Clipper_{SM} Cards and add value to the Clipper_{SM} Cards.

Clipper_{SM} System means the centralized, automated fare collection system using Smart Cards as the transit fare payment media for the San Francisco Bay Area's multiple transit systems, being implemented by Cubic, for MTC.

Clipper_{SM} website means the website through which Cubic administers the Clipper_{SM} System.

1.2 In this Agreement unless the context otherwise requires:

- (a) the expression "person" includes an individual, body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- (b) the expressions "in particular", "including", "includes" and "include" have the meaning "as if" "followed by" and "without limitation";
- (c) a reference in any clause to an example does not limit the generality of the clause;
- (d) a reference to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument includes, respectively, this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any provision of it includes any statutory modification or re-enactment or any statutory provision substituted for it and all ordinances, by-laws, regulations and other statutory instruments issued under it;
- (g) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this Agreement;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (k) a reference to a month is a reference to a calendar month.

2. Employer Relationship

- 2.1 The Company will identify and list on the Clipper_{SM} Direct Benefits website the Active Employees and set the limits of the amount each Employee will contribute, as well as any subsidy the Company will offer. Such Employees will choose which Clipper_{SM} Products they wish to add to their Clipper_{SM} Cards, through the Clipper_{SM} Direct Benefits website.
- 2.2 The Company will collect the money from Active Employees required to pay for the Program Benefits or provide funding itself in order to be able to pay Cubic the full price of the Program Benefits provided to Employees, in accordance with the price Cubic specifies for such Program Benefits.
- 2.3 The Company will ensure all the Active Employees are made aware of the License Agreement on the Clipper_{SM} website and that Employees are notified of their responsibility to comply with the latest version of the License Agreement.

3. Prices

- 3.1 The Company agrees to pay the following fees for Active Employees:
 - (a) Employer Registration Fee: Cubic is currently not charging an Employer Registration Fee.
 - (b) Monthly Service Fee per employee: Cubic will charge the Employer a fee of \$3.00 per month for each Active Employee, whether or not they are currently receiving benefits. This fee may not be paid by the employee.
 - (c) Service Deactivation: Cubic will charge the Employer a fee of \$3.00 for each Active Employee who participated in the program during the preceding three months, if the Employer cancels its participation in the program, for whatever reason.

4. Payment and Settlement Process

- 4.1 Cubic and the Company agree to the following procedures:
 - (a) The Company will activate the account of each Employee who chooses to participate in the Employer Program, through the Clipper_{SM} website. The Company agrees and acknowledges that:
 - (i) it is the Company's responsibility to update the list of Active Employees on the Clipper_{SM} Direct Benefits website;
 - (ii) Cubic will continue to provide Program Benefits to Active Employees while they remain on that list, and
 - (iii) the Company will be responsible for paying the fees and benefits for the Program Benefits for all Active Employees listed on the Clipper_{SM} Direct Benefits website, regardless of whether or not Employees are still participating in the Employer Program.
 - (b) Cubic will provide the Company via email with an invoice on the 15th day of each month prior to the Benefit Month, showing the aggregate of all Active Employee orders, the monthly administration and participation fees for the upcoming Benefit Month and any credits for unfulfilled orders from the previous Benefit Month.
 - (c) The Company will pay to Cubic by one of the following methods:

- (i) An electronic transfer to Cubic's Designated Bank Account in an amount consistent with designated Employee elections and the participation fees (as listed in the invoice) by the 20th day of the month prior to the Benefit Month to which the Program Benefits relate.
 - (ii) A check, received by Cubic by the 20th day of the month prior to the Benefit Month to which the Program Benefits relates. Cubic will process the check electronically.
 - (iii) Cubic will withdraw the funds through ACH transfer, from the Company's designated bank account on the 20th day of the month prior to the Benefit Month to which the Program Benefits relate.
 - (iv) On the 20th of the month prior to Benefit Month, Cubic will charge the Company's designated credit card the full amount of the invoice that was sent to the Company on the 15th of the month.
- (d) If Cubic has not received the full amount required to pay for all Program Benefits for the Company's Active Employees by the 22nd day of the month preceding a Benefit Month, Cubic may in its absolute discretion determine how to apportion the Program Benefits for which money has been received to the Active Employees. The Company must, if required by Cubic, give Cubic any information Cubic reasonably requires to assist Cubic in such apportionment.
- (e) All Employees must have Clipper_{SM} Cards in order to receive Program Benefits, and if an Employee requires a Clipper_{SM} Card, they can purchase one through the Employer Program, on line, by phone or in person at any Designated Merchant Location.
- (f) All Employees must register their Clipper_{SM} Cards with Clipper_{SM} Program in order to participate in the Employer Program. This can be done on line when the Employee signs up for the Employer Program.
- (g) Cubic will load the Program Benefits onto the Clipper_{SM} Cards of each Active Employee once the Program Benefit and fees have been paid by the Employer.
- (h) If none of the funds required under clause (b) and (c) are transmitted by the Company to the Designated Bank Account by the 22nd of the month prior to the Benefit month, but are transferred at a later date, Cubic may, at its discretion, choose to load the benefits onto the Employee's cards even though the date at which the Benefits are loaded is later than the beginning of the Benefit month. This may reduce the value of some of the benefits (such as the monthly passes) as some of the benefit duration may have already passed.
- (i) In order to complete the process of loading a Program Benefit onto a Clipper_{SM} Card, the Employee must present his/her Clipper_{SM} Card at a Clipper_{SM} Device at the beginning of the Benefit Month in which those Program Benefits are first due to be made available by Cubic. The Company will inform Employees of this fact. An Employee need not use all Program Benefits in the Benefit Month in which they were loaded onto the Clipper_{SM} Card.
- (j) If the Program Benefits are not able to be loaded onto the Employee's card because of the maximum card limit, or for another reason related to the Program administration, the funds that were not added to that card will be returned to the Company for distribution to

the Employee. The returned funds will be reflected as a credit on the Employer invoice for the next month.

4.2 During the Term:

- (a) the Company will work with Cubic as required to ensure that the performance of Company's role in the administration of the Employer Program is operationally and technically compatible with Cubic's role in the provision of the Clipper_{SM} System; and
- (b) no party will, without prior written consent of the Employee, sell, use or disclose information regarding Employees, other than:
 - (i) use or disclosure that is required to comply with its obligations under this Agreement; and;
 - (ii) use or disclosure that is required under any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator (provided the party discloses the minimum information to comply with the law, order or requirement);
- (c) Cubic will work with the Company to transfer the transit value onto new Clipper_{SM} Cards if an Employee loses his/her Clipper_{SM} Card, provided that such Employee:
 - (i) has reported the loss of his/her Clipper_{SM} Card to the Company;
 - (ii) has acted in accordance with the License Agreement; and
 - (iii) pays for a new Clipper_{SM} Card;
- (d) Each party will be solely responsible for its financial and other obligations to Transit Operators.

4.3 The Company agrees it will remain solely liable for:

- (a) The correctness of all information contained on the list on the Clipper_{SM} website of the Active Employees and the Program Benefits they require; and
- (b) All risks associated with transactions and amounts payable by Active Employees for the Program Benefits.

5. Marketing Materials

The Company acknowledges that any advertising or announcements regarding use of the Clipper_{SM} System must be approved by MTC. Cubic does not have the right or authority to authorize any use of the Clipper_{SM} name.

Company must contact MTC to determine the extent to which it may or may not be able to market the Clipper_{SM} System in its own marketing materials.

6. Term and Termination

6.1 Term

This Agreement will commence on the latest date upon which Cubic or the Company executes it and will continue until terminated by one of the parties under clause 6.2.

6.2 Termination

- (a) In the event of material breach of this Agreement, the party in breach will have thirty (30) days in which to cure the breach after receipt of written notice of such breach from the other party. Should the breach not be cured within this time, the party giving the initial notice may give another notice terminating this Agreement, and this Agreement shall be taken to have been terminated as of the date of the second written notice is sent.
- (b) Either party may terminate this Agreement for convenience, provided that the terminating party provides written notice of termination to the other party stating that the Agreement will expire at the end of the latest Benefit Month in respect of which Company has paid Cubic the amounts due under clause 4.
- (c) On termination of this Agreement all rights and duties of the parties toward each other shall cease except that the Company rights and duties under clauses 4.2(b) and 7.1 of this Agreement shall survive termination.

7. Indemnification and Liability

7.1 Indemnification

Company shall indemnify and hold harmless and keep Cubic, its directors, officers, employees, agents and representatives (“the Cubic’s Indemnitees”), from and against all losses, liabilities, claims, expenses or costs (direct or indirect) (including reasonable legal fees and expenses), damages or causes of action suffered by the Cubic Indemnitees, arising out of Company’s performance, failure to perform, or failure to comply with its obligations under this Agreement, except in respect of any loss, liability, claim, expense, cost, damage, or cause of action to the extent that it is caused by the negligence or other tortious acts of one or more Cubic Indemnitees or by a breach of the Agreement by Cubic.

7.2 Refunds

Internal Revenue Service Regulations state that pre-tax transit benefits cannot be refunded to an Employee, once an election is made. An election is made once the pre-tax transit benefits are loaded onto the Employee’s Clipper_{SM} card. Because of this restriction, Employer acknowledges that no refund will be given on a Clipper_{SM} Card, once that card is associated with the Employer Program, even if the Employee has added his/her own post tax funds to the card. The Employer will support this restriction with its Employees. This provision is subject to change if the IRS regulations change.

7.3 Procedure

A party seeking indemnification hereunder shall give written notice (a “Notice”) to the indemnifying party promptly after becoming aware of any fact, condition or event that may give rise to a claim for which indemnification is sought. If any lawsuit, action or other proceeding is filed or threatened to be filed against the indemnifying party, a Notice shall be given to the indemnifying party promptly (and in any event within seven (7) calendar days after the service of the citation or complaint of the written notification of a claim or threatened claim). The failure of an indemnified party to give timely notice hereunder shall not affect rights to indemnification hereunder, except to the extent the indemnifying party demonstrates actual damage caused by such failure.

7.4 Liability

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER OR IN RESPECT OF THIS AGREEMENT FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL OR ECONOMIC LOSS OR DAMAGE (INCLUDING LOST PROFITS, SAVINGS OR BUSINESS OPPORTUNITIES), WHETHER FOR BREACH OF CONTRACT, FOR ANY TORT IN CONNECTION WITH THIS AGREEMENT (INCLUDING NEGLIGENCE), OR ANY OTHER THEORY OR BASIS OF LIABILITY WHATEVER AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8. General Provisions

8.1 Entire Agreement

This Agreement (including any and all exhibits and amendments hereto, which are hereby incorporated herein by reference) constitutes the entire Agreement between the parties and supersedes all oral or written proposals, prior agreements and any other prior communications between the parties concerning the subject matter of this Agreement. This Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the parties hereto and their permitted successors and assigns.

8.2 No third party beneficiaries

Despite the fact that this Agreement requires Cubic to do things which may be of benefit to Employees or other persons who are not a party to this Agreement, a person who is not a party to this Agreement may not enforce this Agreement. The parties may not enforce this Agreement on behalf of persons who are not parties to this Agreement.

8.3 No Agency or Joint Venture

This Agreement shall not be deemed to create a partnership, franchise or joint venture and neither party is the other party's agent, partner, franchisee, employee or representative.

8.4 Force Majeure

Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, or act of government, telecommunications failure, shortages of material or supplies or any other cause beyond the control of such party, provided that the effected party gives the other party written notice thereof promptly upon discovery thereof and, in any event, within twenty four (24) hours of discovery thereof, and uses its best efforts to cure the delay. If a party is relieved from its obligations under this Agreement under the foregoing part of this clause the other party is relieved from any obligation that depends on the obligation of which the first party was relieved.

8.5 Severability

Should any provision of this Agreement be held to be void, invalid or unenforceable, such provision shall be enforced to the maximum extent permissible, and the remaining provisions of this Agreement shall remain in full force and effect.

8.6 Authority to Execute

The parties mutually represent and warrant that (i) each has the legal power and authority to execute and perform this Agreement and to grant the rights and assume its obligations herein and (ii) that the person(s) executing this Agreement below on each 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 parties hereunder.

8.7 Notices

All notices, demands or consents required or permitted under this Agreement shall be in writing. Notice shall be considered delivered and effective when (i) personally delivered; (ii) the day following transmission if sent by Facsimile with confirmed receipt; or (iii) three (3) days after posting when sent by certified or registered US Mail or by registered private carrier with confirmed receipt (e.g. DHL, Federal Express, etc). Notice shall be sent to the parties at the addresses set forth on the first page of this Agreement or at such other address as shall be given by either party to the other in writing.

8.8 Assignment

Neither party may assign this Agreement or any of its rights or obligations under this Agreement, whether by operation of law or otherwise; without the prior written consent of the other party and such consent shall not be unreasonably withheld.

8.9 Governing Law

The interpretation, performance, and enforcement of this Agreement shall be governed by the laws of California. Jurisdiction for any disagreements or law suits regarding this Agreement shall be in Alameda County, California.

8.10 Counterparts

- (i) This Agreement may be signed in two or more counterparts, and all counterparts, taken together, constitute one instrument.
- (ii) A party may sign this Agreement, or any counterpart, by signing a copy that has been signed by the other party and sent to the party signing by facsimile or as a scanned copy. The facsimile or scanned document signed in that way will be accepted as an original.

Executed by the parties as an agreement.

Signed for Cubic Transportation Systems, Inc. by its authorized representatives:

Signature of authorized representative

Date:

Name of authorized representative (please
print)

Signed for *Your Company Name* by its authorized representatives:

Signature of authorized representative

Date:

Name of authorized representative (please
print)

