

Joint Board Special Meeting
April 19, 2019

Action: Approve the revised ORCA System Interlocal Agreement (ILA)

Purpose: To obtain Joint Board approval of the revised *Interlocal Cooperation Agreement for Implementation, Operation and Maintenance of the ORCA System* for the purpose of securing ORCA agencies' individual governing bodies approval and authority for each Joint Board member to execute the ILA. The Agreement is referred to as the *ORCA System Interlocal Agreement (ILA)*.

Once executed, this ORCA System Interlocal Agreement will be in effect concurrently with the legacy ORCA Interlocal Agreement. The legacy ILA will expire once the Vix Contract is terminated. In the event of a dispute, the Joint Board will determine which Interlocal Agreement takes precedent.

Background: On September 10, 2018, the Joint Board approved the next generation ORCA System Interlocal Agreement. Six agencies have since obtained governing body approvals.

During their preparation for governing body approvals, KCM requested revisions to the ILA, primarily regarding indemnification and insurance. The Regional Program Administrator and agency attorneys reviewed KCM's proposed revisions and reached agreement on final content changes in the following sections:

- 3.8 Regional ORCA Operation Team – expands definition to note members of the ROOT are members of the regional ORCA Project Team or are employees of the ROOT Agency.
- 5.6 Indemnifications – separates ROOT Agency indemnification from Regional Service Provider indemnification.
- 5.7 ROOT Agency Insurance – adds ROOT Agency insurance requirements and minimums which may be modified under the Joint Board authority.
- 14.5 Claims by Third Parties – adds Section 5 reference regarding application of claims.

The final revisions are incorporated in the attached ORCA System Interlocal Agreement.

Since the new ORCA System ILA was never completely approved and executed by all of the ORCA agencies, this revised version will replace the version approved by the Joint Board in September 2018 and will require approval by the seven ORCA agency governing bodies prior to execution by individual Joint Board members.

Recommendation: The Site Managers and Agency Attorneys recommend approval of the ORCA System Interlocal Agreement as revised.

INTERLOCAL COOPERATION AGREEMENT
FOR IMPLEMENTATION, OPERATION AND MAINTENANCE
OF THE ORCA SYSTEM

[_____, 2019]

Interlocal Cooperation Agreement
For Implementation, Operation and Maintenance
of the ORCA System

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Interlocal Cooperation Agreement
For Implementation, Operation and Maintenance
of the ORCA System

This Interlocal Cooperation Agreement for design, implementation, operation and maintenance of the ORCA System is entered into by the Snohomish County Public Transportation Benefit Area ("Community Transit"), the Kitsap County Public Transportation Benefit Area ("Kitsap Transit"), the Central Puget Sound Regional Transit Authority ("Sound Transit"), the State of Washington, acting through the Washington State Department of Transportation, Ferries Division ("Washington State Ferries"), the Pierce County Public Transportation Benefit Area ("Pierce Transit"), the City of Everett ("Everett") and King County ("King County"), individually referred to as an "Agency" and collectively known as "the Agencies" in this Agreement.

RECITALS

- A. The Agencies provide public transportation services within their service areas and as part of such services, collect fares from riders.
- B. Pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW, the Agencies desire to jointly exercise their powers to better coordinate their respective services and fare payments systems in order to improve the availability, reliability and convenience of public transportation services within their service areas and throughout the region served by the Agencies.
- C. The Agencies desire to implement the next generation ORCA System to update the common, non-cash fare system throughout their service areas.
- D. The purpose of this Agreement is to establish the terms under which the Agencies will plan and implement activities necessary to transition from legacy ORCA and will operate the next generation ORCA System. The 2009 "Amended and Restated Interlocal Cooperation Agreement for Design, Implementation, and Maintenance of the Regional Fare Coordination System" will remain in place until termination of the legacy ORCA vendor contract.

NOW, THEREFORE, in consideration of the following terms and conditions and the above recitals which are incorporated into this Agreement and other valuable consideration, the sufficiency of which is hereby acknowledged, the Agencies agree to the above Recitals and the following:

TERMS AND CONDITIONS

1.0 BACKGROUND AND PURPOSE

1.1 Agreement Purposes. This Agreement expresses the common interests of the Agencies for the successful implementation and operation of the ORCA System to encourage the use of public transportation and increased conveniences to the public in the payment of public transportation fares. This Agreement, among other things, establishes the framework for the Regional ORCA Operations Team (ROOT) and Regional Service Providers, the respective roles and responsibilities of the Agencies, the Systems Integrator (SI) and other ORCA Vendor contractors, the allocation of revenue collected utilizing the ORCA System, and the Agencies' commitments to fund their own and the regionally-shared costs to develop, operate, maintain and update the ORCA System.

1.2 Joint Board. The Agencies have created the Joint Board for the purpose of acting in the common good for all Agencies on the matters covered by this Agreement.

1.3 Naming Convention. The Agencies have agreed that the ORCA System will continue use of the trademarked name "ORCA" to inform and educate the public, in marketing materials and documents, and when undertaking other activities related to the ORCA System.

2.0 TRANSITION PERIOD

2.1 Need for Transition Period. The Agencies agree it is necessary to provide for a Transition Period to accommodate the concurrent performance of the final activities related to legacy ORCA and the initial and subsequently on-going operating activities necessary for the ORCA System.

2.2 Need for Regional Staff During Transition. The Agencies acknowledge and agree that during the Transition Period, regional staff will be necessary for development and operations activities for the new ORCA System and concurrently for operations of the legacy ORCA program.

2.3 Resolution Between Agreements. In the event of a conflict between legacy ORCA 2009 ILA and this Agreement, any such conflicts will be resolved by the Joint Board.

3.0 DEFINITIONS

The following definitions shall apply under this Agreement unless the context requires otherwise or another definition is expressly provided in this Agreement.

3.1 "Agency" or "Agencies" means each of the public transportation agencies that is a party to this Agreement.

3.2 "Agency Business Manager" means the person designated by an Agency to act as the primary point of contact for the Agency and the person authorized to speak for that Agency in matters relating to the ORCA System, unless otherwise provided in this Agreement.

3.3 "Business Account" means an entity other than an individual customer, including, but not limited to, an employer, educational institution or social service agency, that purchases ORCA Cards and/or Products for distribution to its employees, students or other program participants according to the terms of an agreement with a Business Account Lead Agency.

3.4 "Business Account Lead Agency" means an Agency authorized by the Joint Board to enter into agreements with Business Accounts on behalf of itself and other participating Agencies.

3.5 "Central Payments Account" means the payment account(s) maintained by the Regional ORCA Operations Team (ROOT) on behalf of the Agencies for the collection of individual Agency funds and subsequent transmission of payments on behalf of the Agencies to the ORCA Vendors and to Agencies acting as the ROOT or as Regional Service Provider.

3.6 "Change Order" means any written change to the Systems Integrator (SI) or other ORCA Vendor contract terms, conditions, specifications, scope, schedule or price, and may be either bilateral or unilateral.

3.7 "Contract Management" means the post-award management of the SI Contract or other ORCA Vendor contracts to ensure compliance with the terms of the contract by the ORCA Vendors, the ROOT and the Agencies.

3.8 "Contract Documentation" means the contract administration or contract management documentation contained in each contract file maintained by the ROOT Agency on behalf of the Agencies.

3.9 "Day" or "day" means a calendar day unless otherwise expressly provided.

3.10 "Escrow Agreement" means the agreement identifying the terms of the escrow services and any related verification services under the Systems Integrator Contract.

3.11 "Joint Board" means the governing body described in Section 4.0 of this Agreement.

3.12 "ORCA" means the regional fare collection system used by the participating Agencies. ORCA is a trademarked term.

3.13 "ORCA Accounts" means collectively the bank accounts that receive or hold payments made by customers, including Business Accounts, arising from the sales of ORCA Cards and/or ORCA Products, to be held on behalf of or disbursed to the Agencies. Such accounts shall be held in the name of the ROOT Agency.

3.14 "ORCA Capital Budget" means a capital project budget approved by the Joint Board for the regionally-shared ORCA Capital Costs.

3.15 "ORCA Capital Costs" means the actual costs in the ORCA Capital Budget for the development, implementation and any future enhancements to the ORCA System, including but not limited to the costs of ORCA systems and equipment, expansions and replacements. ORCA Capital Costs may consist of both agency-specific costs and regionally-shared costs that are allocated to each agency in accordance with the Capital Budget Policy.

3.16 "ORCA Card(s)" means any fare media or credential that can be presented for payment of fare on participating Agencies' services provided by, and in accordance with the terms established by the Agencies.

3.17 "ORCA Central Payment Gateway" means a single e-commerce application provider service that receives payment data for authorized credit card payments for all Agency sales channels except for Washington State Ferries.

3.18 "ORCA Director" means the employee of the ROOT Agency, approved by and reporting to the Joint Board, who directs and oversees administration, operations and planning of the ORCA System. As used in this Agreement, the term ORCA Director includes any person designated by the ORCA Director to perform a specific task on his or her behalf.

3.19 "ORCA Operating Budget" means the annual budget approved by the Joint Board that contains ORCA Operating Costs as defined in this Agreement.

3.20 "ORCA Operating Costs" means the actual costs of operating and maintaining the ORCA System and equipment that are approved by the Joint Board for cost-sharing among the Agencies in the annual ORCA Operating Budget. ORCA Operating Costs include: (a) the actual labor, material, overhead and other costs of the ROOT and other regional services providers; (b) the shared costs payable to the Systems Integrator (SI) and other ORCA Vendor contractors; and (c) such other operating costs designated and approved for cost-sharing by the Joint Board. ORCA Operating Costs are a component of the regional costs shared by the Agencies according to the ORCA budget policies. Agencies are also responsible for agency-specific operating costs related to that agencies' administration and management of the ORCA System.

3.21 "ORCA Project Team" means the regional program team tasked with design and implementation of the ORCA System.

3.22 "ORCA Product(s)" or "Product(s)" means any transit fare payment option offered for sale within the ORCA System including, but not limited to, monthly or period passes, E-purse, or ORCA Cards.

3.23 "ORCA Steering Committee" (OSC) means the regional Agency committee created to advise and collaborate with the Joint Board, the ORCA Project Team, and the Agency Business Managers on development and implementation of the ORCA System and subsequent ORCA projects.

3.24 "ORCA System" means the equipment, systems, facilities, ORCA Cards, ORCA Products, ORCA websites, data, information, and any products and services implemented by the Agencies using smart cards, open architecture and application-based systems to provide fare payment on participating Agencies' transportation services.

- 3.25 "ORCA Vendor(s)" means any contractor, including the Systems Integrator (SI), other than an Agency, that is retained by authority of the Joint Board and on behalf of all the Agencies to provide goods, legal, financial, technical and other services.
- 3.26 "Participating Agency" means an Agency on whose behalf a Business Account Lead Agency enters into an agreement with a Business Account for the sale of ORCA Cards and/or ORCA Products.
- 3.27 "PCI-DSS" means Payment Card Industry Data Security Standards.
- 3.28 "Regional ORCA Operations Team" or "ROOT" means **the members of the ORCA Project Team and those employees of the ROOT Agency who comprise** the centrally-managed dedicated team responsible for planning, administration, management, and operations of the ORCA System.
- 3.29 "Regional Program Manager" means the ORCA Project Team manager responsible for implementation of the ORCA System and for contract administration as described in the SI Contract or other ORCA Vendor contracts.
- 3.30 "Regional Service Providers" means the Agencies designated by the Joint Board to perform regional functions for the ORCA System under Service Level Agreements with ROOT.
- 3.31 "ROOT Agency" means the agency designated by the Joint Board responsible for centralized, regional management, operations and administration of the ORCA System.
- 3.32 "Security Document" means a generic term for either an irrevocable letter of credit or a performance bond depending on the context.
- 3.33 "Service Level Agreement" (SLA) means an agreement that governs functions and performance between the ROOT and each Regional Service Provider or between the ROOT and the Agencies.
- 3.34 "Systems Integrator Contract" (SI) or (SI Contract) means the contract signed by Sound Transit, on behalf of the Agencies, under which the contractor shall design and implement the ORCA System.
- 3.35 "Transition Period" means the period during which both legacy ORCA and the ORCA System operating efforts are undertaken concurrently.

4.0 JOINT BOARD

4.1 Creation of Joint Board. The Joint Board created under the executed 2003 Interlocal Agreement and maintained in the executed 2009 Amended and Restated Interlocal Agreement, remains in effect under this Agreement. By executing this Agreement, the Joint Board shall function as a joint board pursuant to chapter 39.34 RCW. The Joint Board shall serve as the governing, policy-setting body to oversee the activities of the ORCA Director, Regional ORCA Operations Team (ROOT), Agencies, Systems Integrator (SI) and other ORCA Vendor contractors related to the design, implementation, operation and maintenance of the ORCA System, as provided in this Agreement. The Joint Board shall act on behalf of all Agencies and as may be in the best interests of the ORCA System.

4.2 Joint Board Members; Quorum. Membership on the Joint Board shall consist of the following Agency officials or their designees, which representative shall be authorized to take actions within the scope of this Agreement: King County's Transit General Manager; Community Transit's Chief Executive Officer; Sound Transit's Chief Executive Officer; Kitsap Transit's Executive Director; Pierce Transit's Chief Executive Officer; Everett's Director of Transportation Services; and Washington State Department of Transportation's Assistant Secretary for Ferries' Division. In addition, an Agency may select an alternate representative to participate on the Joint Board during the absence or inability of the designated official to participate. A quorum for a meeting of the Joint Board shall be a majority of the representatives of the Agencies.

4.3 Meeting Procedures. The Joint Board shall establish procedures for the operations and meetings of the Joint Board, including the election of a chair, vice chair, and other positions deemed necessary by the Joint Board and the frequency of meetings. The terms of office of the chair and other positions shall be determined by the Joint Board. The vice chair shall serve as acting chair if the chair is absent or otherwise unavailable. Each Joint Board representative shall be entitled to one vote. Voting by proxy may be permitted according to procedures adopted by the Joint Board. The Joint Board shall comply with applicable requirements of the Washington State Open Public Meetings Act.

4.4 Authority of Joint Board. The Joint Board is authorized to make decisions and take actions on all matters related to the ORCA System except those matters that require action by the governing boards of the Agencies. At a minimum, such decisions and actions that do not require further action by Agency governing boards include, but are not limited, to the following:

- 4.4.1 Make such decisions and take such actions as are expressly delegated to the Joint Board under this Agreement.
- 4.4.2 Approve changes to, and termination of, the SI Contract and other ORCA Vendor contracts. The Joint Board may delegate to the ORCA Director the authority to make changes to the SI Contract and other ORCA Vendor contracts, within limits established by the Joint Board and subject to the adopted Budget.
- 4.4.3 Approve the ORCA Capital Budget, capital shares methodology, and any budget amendments in accordance with the ORCA Capital Budget Policy.
- 4.4.4 Approve the ORCA Operating Budget, operating shares methodology, and any budget amendments in accordance with the ORCA Operating Budget Policy.
- 4.4.5 Approve revenue allocation formula for all regional ORCA Products.

- 4.4.6 Authorize the ROOT Agency to enter into contracts and make changes to same for designated Regional Services Providers. Provided, however, the Joint Board may delegate to the ORCA Director the authority to enter into contracts and make changes to same, within limits established by the Joint Board and subject to the adopted Budget.
- 4.4.7 Approve the public communication plan for the ORCA System implementation as developed by the ROOT Agency.
- 4.4.8 Consent to an Agency entering into a contract with an ORCA Vendor for a specialized application.
- 4.4.9 Approve the addition of new applications or integrations on ORCA Cards and access to the ORCA System by third parties. It is expressly agreed that no Agency is authorized to perform these activities without prior review by the ROOT Agency and approval of the Joint Board.
- 4.4.10 Appoint or replace an agency designated as a Regional Service Provider.
- 4.4.11 Approve the selection, oversee and review performance, and conduct annual performance review of the ORCA Director.
- 4.4.12 Approve the selection of an acting ORCA Director to fulfill responsibilities during absence or vacancy of the ORCA Director.
- 4.4.13 Adopt and amend a policy on ORCA System funds management to include guidelines designed to maximize return on ORCA funds while ensuring liquidity, under which the ROOT is to manage funds held by it in its role under this Agreement.
- 4.4.14 Authorize purchase of liability insurance with an appropriate deductible to protect the Agencies, provided that the funds to purchase such insurance are available in the ORCA Operating Budget. The insurance carrier or carriers providing such insurance shall be authorized to do business in the state of Washington and each have a Best's rating of no less than A: VIII.
- 4.4.15 Approve or amend all necessary business rules, policies and Service Level Agreements (SLA) under this Agreement, including but not limited to: Business Account Program Policy, Capital Budget Policy, Capital Investment Policy, Operating Budget Policy, Data Security Policy, Incident Response Plan, Records Management Policy, ROOT-Agency SLA and ROOT-Regional Service Provider SLAs.
- 4.4.16 Approve the addition of new parties to this Agreement and the terms and conditions for such addition pursuant to Section 11.0.
- 4.4.17 Approve the terms and conditions for an Agency's withdrawal from this Agreement, pursuant to Section 15.0.
- 4.4.18 Remove an Agency from this Agreement for good cause and establish the payments to be made by the Agency on account of such removal, pursuant to Section 15.0.
- 4.4.19 Conduct or cause to be conducted an annual review of the ORCA System and the performance of any ORCA Vendor.

- 4.4.20 Establish committees and advisory groups to perform activities related to the ORCA System or to provide reports or recommendations to the Joint Board related to the ORCA System.
- 4.4.21 Approve and amend the charter for the ORCA Steering Committee (OSC) outlining the structure, roles, responsibilities and authorities associated with OSC activities during design and implementation of the ORCA System and future ORCA capital projects.
- 4.4.22 Approve and amend the charter for the ORCA Security Committee (OSEC) outlining the structure, roles, responsibilities and authorities associated with OSEC oversight of information security and risk management activities for the ORCA System.
- 4.4.23 Approve, by unanimous vote, the addition of other decisions and actions to those specified below in Subsection 4.5 that require only a simple majority vote of the Agency representatives present and voting on the matter at a meeting in which a quorum is present.
- 4.4.24 Delegate the Joint Board's authority under this Agreement subject to such limitations and conditions as the Joint Board may establish.

4.5 Decision-Making/Voting Process. The Joint Board shall attempt to reach consensus agreement on the decision before it. The Joint Board shall make decisions and take action by voting with each Agency having one vote. Except as provided below, decisions and actions by the Joint Board shall require a unanimous vote of the Agency representatives present and voting on the matter at a meeting in which a quorum is present. The following decisions shall require only a simple majority vote of the Agency representatives present and voting on the matter at a meeting in which a quorum is present:

- 4.5.1 Termination/replacement of the ORCA Director, in accordance with Section 5.0.
- 4.5.2 Termination/replacement of one of the Regional Service Providers.
- 4.5.3 Approval of change orders, provided the amount approved does not exceed the adopted Budget.
- 4.5.4 Determination of the amount of damages and additional costs to be paid by a withdrawing Agency or an Agency removed from this Agreement.
- 4.5.5 Approval of agency-specific purchases of goods and services in accordance with this Agreement.

4.6 Record of Decisions. Except as provided in this Agreement, all decisions made by the Joint Board under this Agreement shall be final and binding on the Agencies. Decisions and actions by the Joint Board shall be memorialized in writing and signed by the chair or acting chair of the Joint Board. A copy of each decision and action shall be distributed to each Joint Board representative and alternate representative within five (5) days of the decision or action.

4.7 Emergency Procedures. Consistent with applicable Washington State law, the Joint Board may adopt procedures for providing direction and decision-making in the event of emergencies that have or may have direct, significant and material negative effects on the operation and maintenance of ORCA and consideration of such emergencies by the Joint Board could not occur in a timely manner, all as determined by the Chair or Vice Chair of the Joint Board. Such procedures may allow expedited

procurement procedures to address the emergency, as may be permitted by Washington State law. Each decision made pursuant to such procedures shall be subject to ratification by the Joint Board in a regular or special meeting within two (2) weeks after the finding of an emergency by the Chair or Vice Chair of the Joint Board.

5.0 REGIONAL OPERATIONS AND ADMINISTRATION

5.1 ORCA Project Team and Duties. The ORCA Project Team is tasked with design and implementation of the ORCA System. The duties and responsibilities of the ORCA Project Team are set forth in the legacy ORCA 2009 Interlocal Agreement as *Exhibit J next generation ORCA Replacement System, Attachment 2 next generation ORCA Program Charter*. The ORCA Steering Committee provides oversight for the ORCA Project Team. Upon transition to operations, the ORCA Project Team will be managed by the ORCA Director and become a part of the Regional ORCA Operations Team (ROOT).

5.2 ORCA Director. The ORCA Director shall serve at the discretion of the Joint Board and will oversee and manage the ROOT. The ORCA Director shall serve under the employment terms and conditions established by the designated Agency who shall nominate and recommend to the Joint Board a person to serve as ORCA Director. The Joint Board, in its sole discretion, may accept or not accept the person recommended by the designated Agency. The designated Agency shall not offer the position of ORCA Director until the Joint Board has approved the recommendation of that person.

5.2.1 ORCA Director Duties. The ORCA Director shall report to the Joint Board and have day-to-day responsibility for the functions and performance of the ORCA System and oversight of the ROOT and the Regional Service Providers as set forth under Service Level Agreements (SLA) adopted by the Joint Board. The ORCA Director shall collaborate with the ORCA Steering Committee, the Agencies and committees established by the Joint Board, and perform other work as may be directed by the Joint Board.

5.2.1.1 The ORCA Director shall work with the ORCA Steering Committee to establish a staffing and operations plans for approval by the Joint Board, and oversee the functions and responsibilities of the ROOT.

5.2.1.2 The ORCA Director shall work with the Agency Business Managers and the ROOT to establish Service Level Agreements for approval by the Joint Board.

5.2.2 Change of ORCA Director. If the Joint Board determines, for whatever reason, that the ORCA System requires a different ORCA Director, the Joint Board shall notify the designated Agency. Such request for removal which shall be subject to the limits and requirements of any personnel or human resources policies and provisions of designated Agency. Subject to such limits and requirements, designated Agency shall then nominate a new ORCA Director who shall be subject to approval of the Joint Board.

5.3 Regional ORCA Operations Team (ROOT). The Joint Board has designated an Agency to perform the functions of the ROOT including budget, change management, finance, operations, planning, security or other functions as may be directed by the Joint Board. The members of the ROOT shall act on behalf of and under the direction of the ORCA Director and under Service Level Agreements approved by the Joint Board. Each member of the ROOT shall serve under the employment terms and conditions established by the ROOT Agency.

5.4 Regional Service Providers. The Joint Board will designate Agencies to perform Regional Service Provider functions under the oversight of the ORCA Director and as set forth in Service Level Agreements adopted by the Joint Board. Changes to the designation of an Agency as a Regional Service Provider must be approved by the Joint Board. The staff of each Regional Service Provider shall serve under the employment terms and conditions established by the Regional Service Provider's agency.

5.5 Protection of ROOT and Regional Service Providers. In consideration of and as an inducement for the work of the ROOT and the Regional Service Providers, the Agencies agree that:

5.5.1 The ROOT or Regional Service Providers staff may rely upon any written report (including net settlement reports prepared by an ORCA Vendor), notice, request, direction, consent, order, resolution, certificate, statement, instrument, or other paper or document submitted to the ROOT by an Agency, the ORCA Director, the ORCA Vendors, the Joint Board or its designee, or any bank holding the ORCA Accounts or any Agency account(s), provided the ROOT has a reasonable belief that the document is: (1) genuine; (2) within the submitting entity's authority under this Agreement, the ORCA Vendor's contract or other applicable agreement; and (3) signed or presented by the authorized representative of the submitting entity. Any action taken, suffered or omitted by ROOT based on such reliance shall be deemed to have been done in good faith for purposes of Section 5.6 below. For purposes of this section an "authorized representative" of an Agency is the person identified by the Agency Business Manager as the person authorized by the Agency to communicate with the ROOT. For purposes of this section, a "written" report, notice, request, direction, consent, order, resolution, certificate, statement, instrument, or other document may be delivered to the ROOT online or by email.

5.5.2 The ROOT or any Regional Service Provider may consult with counsel engaged by its Agency (whether in-house or external) and independent certified public accountants from time to time, and reliance on the written advice of such counsel or accountants with respect to any action taken, suffered or omitted by the ROOT shall be deemed to be in good faith and subject to the provisions of Subsection 5.5.1 above.

5.5.3 The ROOT or any Regional Service Provider staff shall be under no obligation to perform any functions or activities not provided for under this Agreement unless (a) the Joint Board has authorized such function or activity; and (b) the Agencies provide to the ROOT and Regional Service Providers such security or indemnity as is reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in the performance of such function or activity.

5.6 Indemnification.

5.6.1 The Agencies, except the Agency appointed as the ROOT Agency, hereby agree to defend, indemnify and hold harmless the ROOT Agency and its officers, directors and employees for and against any lawsuits, claims, actions, loss, liability or expense arising out of or in connection with the ROOT's acts or omissions in the performance of its duties under this Agreement, except to the extent such lawsuits, claims, actions, loss, liability or expense arises from the ROOT's gross negligence, bad faith, or willful misconduct and except to the extent that such lawsuits, claims, actions, loss, liability or expense is covered by a policy of insurance purchased by the ROOT Agency or authorized by the Joint Board pursuant to Section 4.4.14 of this Agreement. Each indemnitor Agency shall be responsible only for the share of the lawsuits, claims, actions, loss, liability or expense in proportion to that Agency's cost sharing percentage in effect pursuant to Section 8.5 of this Agreement on the relevant date of loss.

Notwithstanding any other provision of this Section 5.6.1, the ROOT Agency shall also be responsible for a share of the lawsuits, claims, actions, loss, liability or expense in proportion to the ROOT Agency's cost sharing percentage in effect pursuant to Section 8.5 of this Agreement on the relevant date of loss. The ROOT Agency's share shall be deducted from the total cost of

the lawsuits, claims, actions, loss, liability or expense before the indemnitor Agencies' shares are calculated.

The ROOT Agency hereby agrees to defend, indemnify and hold harmless the other Agencies and their officers, directors and employees for and against any lawsuits, claims, actions, loss, liability or expense arising out of or in connection with the ROOT's gross negligence, bad faith or willful misconduct.

5.6.2 The Agencies, except the Agency appointed as the Regional Service Provider, hereby agree to defend, indemnify and hold harmless the Regional Service Provider Agency and its officers, directors and employees for and against any lawsuits, claims, actions, loss, liability or expense arising out of or in connection with the Regional Service Provider Agency's acts or omissions in the performance of its duties under this Agreement, except to the extent such lawsuits, claims, actions, loss, liability or expense arises from the Regional Service Provider Agency's gross negligence, bad faith, or willful misconduct and except to the extent that such lawsuits, claims, actions, loss, liability or expense is covered by a policy of insurance purchased by the Regional Service Provider or authorized by the Joint Board pursuant to Section 4.4.14 of this Agreement. Each indemnitor Agency shall be responsible only for the share of the lawsuits, claims, actions, loss, liability or expense in proportion to that Agency's cost sharing percentage pursuant to Section 8.5 of this Agreement and in effect on the relevant date of loss.

Notwithstanding any other provision of this Section 5.6.2, the Regional Service Provider Agency shall also be responsible for a share of such lawsuits, claims, actions, loss, liability or expense in proportion to the Regional Service Provider Agency's cost sharing percentage in effect pursuant to Section 8.5 of this Agreement on the relevant date of loss. The Regional Service Provider Agency's share shall be deducted from the total cost of the lawsuits, claims, actions, loss, liability or expense before the indemnitor Agencies' shares are calculated.

Each Regional Service Provider Agency hereby agrees to defend, indemnify and hold harmless the other Agencies and their officers, directors and employees for and against any lawsuits, claims, actions, loss, liability or expense arising out of or in connection with the Regional Service Provider's gross negligence, bad faith or willful misconduct.

5.6.3 The provisions of Section 5.6 shall survive the termination of this Agreement or the earlier resignation or removal of the Agency designated as the ROOT Agency or as a Regional Service Provider Agency.

5.7 ROOT Agency Insurance

5.7.1 The Agency designated as the ROOT Agency shall procure and maintain, at its sole cost and expense, or require its Contractor(s) to maintain the minimum insurance set forth below for the protection and handling of its liabilities, unless modified as directed by the Joint Board.

5.7.1.1 Commercial General Liability with minimum limits of \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

5.7.1.2 Cyber Liability with minimum limits of \$1,000,000 per claim or occurrence and in the aggregate. Coverage shall include loss resulting from data security/privacy breach, extortion, unauthorized access or related violations including identity fraud and

privacy law violations. Coverage shall include notification and other expenses incurred in remedying a privacy breach as well as costs to investigate and restore data.

5.7.1.3 Crime Insurance with minimum limits of \$1,000,000. Coverage shall include theft, disappearance, destruction liability, employee dishonesty, and shall include 'Joint Loss Payable' ISO Form CR 20 15 10/10 or its substantive equivalent.

5.7.1.4 Workers' Compensation with statutory limits.

5.7.1.5 Employer's Liability or "Stop Gap" with minimum limits of \$1,000,000 each occurrence.

5.7.2 The Agency designated as ROOT Agency and its Contractor(s) shall include all other Agencies, their respective officers, officials, employees and agents as additional insureds for full policy limits as respects liability arising out of activities performed by or on behalf of the ROOT in connection with this Agreement.

5.7.3 To the extent of the ROOT Agency's or its Contractors' negligence, this insurance coverage shall be primary insurance as respects the other Agencies, their officers, officials, employees, and agents, including being primary to any indemnification language within this agreement.

6.0 CONTRACT ADMINISTRATION AND MANAGEMENT

6.1 Authority to Execute and Administer Contracts. The Regional ORCA Operations Team (ROOT) Agency is duly authorized to award, execute and modify contracts with the Systems Integrator (SI) and with other ORCA Vendors. Said contracts provide that no Agency shall be liable to the contractors for more than its applicable percentage share, of the total amounts due the contractors.

The ROOT Agency shall solicit proposals and bids and award and administer the SI and other ORCA Vendor contracts related to the ORCA System within the budgets adopted by the Joint Board. The ROOT Agency shall follow its established procurement policies and procedures, and unless otherwise approved by the Joint Board, and shall be responsible for administration of such contracts.

6.2 Contract Administration and Management. The Agencies agree it is essential to have efficient processes and procedures for administering contracts with the SI and other ORCA Vendors. This Section 6.0 describes the general contract administration and management activities and actions that are to be managed or taken by the ORCA Director, the ROOT Agency, the Regional Program Manager, or by the Agencies. The Agencies intend that the authorities of the ROOT and Joint Board are to be generally consistent with the usual grants of authorities for administration of contracts awarded by a public agency, notwithstanding the fact that the ROOT Agency may have specific policies and practices related to contract administration that are different from the other Agencies.

- 6.2.1 The ORCA Director shall make all decisions except those decisions identified in this Agreement that are made by the Joint Board or governing bodies of the Agencies consistent with the level of monetary expenditure authorized by the Joint Board. The ORCA Director, ROOT contract management staff, and the ORCA Project Team, will monitor the performance of ORCA Vendor contracts and maintain a contract management system that ensures that the contractors perform in accordance with the terms, conditions and specifications of their contracts.
- 6.2.2 The Agencies acknowledge that it is essential the contract administration and management staff and the ORCA Project Team serve as communication conduit with the SI or other ORCA Vendors. The Agencies and members of the Joint Board shall refrain from communicating directly with the SI or other ORCA Vendors, unless specifically designated by the ORCA Director or Regional Program Manager. However, each Agency may communicate directly with ORCA Vendors as necessary for specialized applications or Agency-specific integrations.
- 6.2.3 The SI and other ORCA Vendor contracts shall be administered by the ORCA Project Team's Regional Program Manager during the development and implementation of the ORCA System and by the ORCA Director after transition to operations.
- 6.2.4 Contract Documentation for SI and other ORCA Vendors contracts will be maintained by the ROOT Agency on behalf of the Agencies. Any Agency may request copies of the Contract Documentation. If an Agency receives a public disclosure request for any of the materials in the Contract Documentation, the Agency will forward the request to the ORCA Director, who shall administer the request in accordance with the ORCA Public Records Disclosure Policy.
- 6.2.5 The ORCA Director may delegate specific activities required to perform contract administration or contract management functions to various members of the ROOT.

6.3 Change Orders. Prior to transition to operations, the Regional Program Manager shall manage Change Orders on behalf of the Agencies. After transition to operations, the ORCA Director shall manage Change Orders under a Service Level Agreement approved by the Joint Board.

6.3.1 The ORCA Director shall notify each Agency of any approved Change Orders and amendments. Each Agency delegates to the ORCA Director its authority to negotiate and approve Change Orders, so long as each Change Order does not exceed \$250,000 and does not exceed the approved budget.

6.3.2 The ORCA Director may request the Joint Board authorize a Change Order that exceeds \$250,000. The Joint Board may authorize additional amounts at levels it deems appropriate provided the approved budget is not exceeded.

6.4 Deliverables under ORCA Vendor Contracts. Approval of contract deliverables shall be described and managed under Service Level Agreement between the ROOT and the Agencies.

6.5 Claims against ORCA Vendors. The ROOT Agency has the authority to file a claim against or seek damages from an ORCA Vendor during the term of the contract. In the event an Agency identifies a cause for a claim, that Agency shall notify the ORCA Director. The ROOT contract management staff shall follow provisions under the applicable ORCA Vendor contract for any claims, damages or delays.

6.6 ROOT Agency; Indemnity. Each Agency agrees to defend, indemnify and hold the ROOT harmless, in its capacity as an individual Agency, for any costs that may be subsequently disallowed for grant reimbursement due to any differences between the ROOT Agency's procurement process and such Agency's process or the requirements of any federal or state agency making a grant that is utilized in the ORCA System.

6.7 Specialized Applications; Indemnity. "Specialized applications" related to the ORCA System and developed by an Agency through the SI or other ORCA Vendors are applications that benefit one or more Agencies but are not integral to the ORCA System, as determined by the Joint Board.

6.7.1 An Agency seeking to develop specialized applications shall enter into individual contracts with the SI Contractor or other ORCA Vendors and be solely responsible for paying the costs of such contracts. At least thirty (30) days prior to entering into such contracts, the Agency shall provide a copy of each proposed contract to the Joint Board and demonstrate to the satisfaction of the Joint Board that entering into each contract will not add cost to the other Agencies and will not delay or interfere with the ORCA System. Any revenue received from a specialized application shall be allocated solely to the Agency that paid for the specialized application.

6.7.2 Each Agency shall defend, indemnify and hold harmless the other Agencies from all claims of any kind and for all costs incurred (including attorneys' fees) as a result of the Agency entering into such individual contracts for specialized applications with the SI or other ORCA Vendor.

6.8 Other Agency Consultant Contracts. Each Agency may sign and administer individual consultant contracts for the performance of ORCA System tasks unique to such Agency that are not covered by SI or other ORCA Vendor contracts. An Agency entering into such individual consultant contracts shall be solely responsible for paying the costs of such contracts. At least thirty (30) days prior to entering into such consultant contracts, the Agency shall provide a copy of each proposed contract to the Joint Board and demonstrate to the satisfaction of the Joint Board that entering into each contract will not add cost to

the other Agencies and will not delay or interfere with the development or operations of the ORCA System.

6.9 Individual Consultant Contract Procurement; Indemnity. To the extent an Agency (the “contracting Agency”) enters into such an individual consultant contract by using the procurement process conducted for ORCA Vendor contracts by another Agency (the “procuring Agency”), the contracting Agency thereby accepts the procuring Agency’s competitive selection process for the purpose of entering into the contracting Agency’s contract and hereby agrees to defend, indemnify and hold the procuring Agency harmless against any and all claims, liabilities or costs of any kind or nature which arise out of or are related to the consultant selection process or any individual contracts with the consultants. As to such individual consultant contracts, no Agency shall be required to use the procurement process conducted for ORCA Vendor contracts.

Each Agency shall defend, indemnify and hold harmless the other Agencies from all claims of any kind and for all costs incurred (including attorneys' fees) as a result of the Agency entering into such individual consultant contracts.

6.10 No Authority Except As Expressly Granted. Each Agency agrees that it shall not exert or purport to possess authority with regard to the ORCA System not expressly provided under this Agreement.

7.0 INDIVIDUAL AGENCY RESPONSIBILITIES

7.1 General Responsibilities. In addition to, and not in limitation of other Agency performance requirements contained in this Agreement, each Agency shall take the following actions consistent with the provisions of this Agreement.

- 7.1.1 Comply with the terms of this Agreement and any policies, business rules, Service Level Agreements or guidelines adopted by the Joint Board including, but not limited to, those regarding business accounts, change management, data and system security, data management, finance, operations, privacy, and public disclosure.
- 7.1.2 Designate an Agency Business Manager to act as a single point of contact for the Agency to work with the Regional ORCA Operations Team (ROOT) to ensure full and timely performance of all Agency responsibilities under this Agreement.
- 7.1.3 Designate an ORCA Steering Committee representative for activities associated with design and implementation of the ORCA System and design and implementation of future changes to the ORCA System.
- 7.1.4 Designate and direct Agency representatives to participate in regional committees as may be established by the Joint Board, or in meetings with the ROOT, Systems Integrator (SI) or other ORCA Vendors, representatives of other Agencies, and any combination of such parties.
- 7.1.5 Comply with the business rules for fare collection and customer services practices, as may be adopted or amended by the Joint Board.
- 7.1.6 Continue to set its own fares and fare policies provided they are consistent with the provisions and practices set forth in this Agreement or business rules established by the Joint Board.
- 7.1.7 Respond to public disclosure requests as required by the Public Disclosure Act (RCW 42.56 *et seq.*), and coordinate Agency responses with other Agencies and the ROOT pursuant to the guidelines adopted by the Joint Board.
- 7.1.8 Maintain individual Agency bank accounts as outlined in the system design and as may be required by the ROOT to facilitate timely transfer of revenue allocations based on sales and use of ORCA Cards and/or ORCA Products.
- 7.1.9 Provide authorization to the ROOT to direct the movement of funds among the ORCA Accounts and the Agency's bank account(s) for the purposes of fare revenue settlement ("Settlement Account").
- 7.1.10 Provide authorization to Internet gateway processors and other service providers as necessary for the authorization and processing of internet sales transactions.
- 7.1.11 For agencies requiring a non-centralized processor, establish merchant agreements with banks and system-designated gateway processors for acceptance and processing of credit and debit card transactions. Such Agency shall accept the risk of loss regarding cash, check, and credit/debit card transactions: (a) processed at the Agency's customer

service office; (b) processed at the Agency's call center; and (c) under a Business Account Agreement when acting as the Business Account Lead Agency.

- 7.1.12 Comply with Generally Accepted Accounting Principles (GAAP), methods prescribed by the Washington State Auditor and business rules established by the Joint Board in accounting for assets, liabilities, resources and expenditures related to the ORCA System.
- 7.1.13 Allow access to facilities and records and/or conduct annual audits in accordance with GAAP and Generally Accepted Auditing Standards (GAAS); report audit concerns to the ROOT.
- 7.1.14 Collect, report and pay any taxes applicable to transactions that are processed by the Agency. Each Agency shall indemnify, defend and hold harmless other Agencies from claims, judgments and penalties of any kind and for all cost incurred (including attorney fees) as a result of the Agency's non-compliance with this subsection.
- 7.1.15 Agree to address all "user control considerations" identified in the Service Organization Controls (SOC) diagnostic review performed by an external auditor and implement such control activities or risk mitigation recommendations made in future external auditor engagements for the ROOT or SI Contractor.
- 7.1.16 Maintain insurance, or if self-insured, adequate reserves to respond to potential issues that arise through the course of the operation of the ORCA System. Without limiting any Agency's defense and indemnification obligations under this Agreement, each Agency shall maintain in force, at all times during the term of this Agreement, a policy or policies of Commercial General Liability insurance with limits not less than \$1 million with insurance carriers authorized to do business in the state of Washington, which have a Best's rating of no less than A: VIII. If an Agency is self-insured, or is a member of a self-insurance pool, a certification of self-insurance covering the activities of the Agency in the ORCA System shall constitute compliance with this insurance requirement. Upon request of the Joint Board, each Agency shall submit documentation demonstrating its compliance with this insurance requirement.

7.2 Security.

- 7.2.1 Adequately manage the security of the Agency's portions of the system, and collectively, the ORCA System, including (but not limited to) the Payment Card Industry Data Security Standard (PCI-DSS), as evaluated against the version that is enforceable during the compliance period being assessed.
- 7.2.2 Incorporate and follow best security practices, the applicable standards at the point in time, in the operation and maintenance of the Agency's respective portions of the ORCA System.
- 7.2.3 Comply with the provisions of business rules and data security policies adopted by the Joint Board.

7.3 Networks, Equipment and Software.

- 7.3.1 Comply with preventative maintenance programs as outlined in the SI or other ORCA Vendor contracts and in operations and maintenance manuals provided by the contractor.
- 7.3.2 Monitor the Agency's networks, equipment, and software related to the ORCA System and take such reporting and corrective measures as are required under the business rules and policies adopted by the Joint Board.
- 7.3.3 Provide to the ORCA Director requested information relating to, and take requested actions required for, the administration and enforcement of warranties on all ORCA-related equipment, hardware and software.
- 7.3.4 Maintain equipment and equipment inventory, warranty and repair records and provide reports as requested by the ORCA Vendors or the ORCA Director to monitor overall system and component reliability, identify regional trends in equipment failures.
- 7.3.5 Comply with the processes and requirements set out by the ORCA Vendors and the ORCA Director to submit requests for authorizing return of equipment and return of defective equipment.
- 7.3.6 Comply with the process set out by the ORCA Director for the submission of documentation to receive ORCA Vendor reimbursement, if applicable, for the cost of removing, replacing and returning defective equipment.
- 7.3.7 Maintain an inventory of spare ORCA System equipment adequate to have sufficient quantities available for the Agency's ORCA operations at all times.

7.4 System Operations.

- 7.4.1 As applicable, provide and maintain communication lines, wireless communications infrastructure, routers and switches connecting locations, including, but not limited to Agency facilities, as necessary for data transmittal for the ORCA System.
- 7.4.2 Repair and reinstate communications networks to maintain an adequate level of network availability as needed to support operation of the ORCA System, as set forth in the Service Level Agreement with the ROOT and as adopted by the Joint Board.
- 7.4.3 Train, or provide training for Agency personnel on operation and maintenance of the ORCA System, consistent in content with those of other Agencies and based on training materials developed by ORCA Vendors.
- 7.4.4 Allow ORCA Vendors to access Agency equipment and facilities for the performance of development, installation, operation and maintenance functions under applicable contracts; provided that the ORCA Vendor shall comply with the Agency's security policies, procedures and requirements including applicable labor agreements.
- 7.4.5 Submit requests to modify the ORCA System following the change management process as set forth in Service Level Agreement with the ROOT and as adopted by the Joint Board.

No changes shall be implemented except through the established change management process.

- 7.4.6 Coordinate fare table and service data updates with other Agencies in accordance with rules established by the ROOT and approved by the Joint Board, and provide such updates in advance per prescribed time lines as may be required by the ORCA Director and the ORCA Vendors to support regional testing prior to deployment into the ORCA System.
- 7.4.7 Ensure operating staff use ORCA components in accordance with published training and operating procedures. Take remedial action and provide supplemental training as required to be in compliance with published training and operating procedures.
- 7.4.8 Establish and maintain procedures and responsibilities for handling incidents and emergencies related to the ORCA System; and provide a designated contact available within two (2) hours' notice to respond to such incidents and emergencies.
- 7.4.9 In coordination with the ROOT, develop, maintain and periodically exercise an Agency business continuity plan to be activated in the event of substantial or complete failure of the ORCA System. Support the ROOT in coordination with the SI Contractor and other ORCA Vendors in the event of the need to recover from such failures.
- 7.4.10 Maintain records of any disciplinary action taken against an employee resulting from willful or negligent misuse or mishandling of ORCA equipment or data, and, as appropriate, notify the ORCA Director of any ORCA System impacts that may result.
- 7.4.11 Make no changes or modifications to any ORCA component, software or ORCA Vendor-provided documentation (other than Agency-customized training materials) without approval from the ROOT.

7.5 Customer Services.

- 7.5.1 If applicable, issue ORCA Cards and/or load ORCA Products for ORCA customers on behalf of all of the Agencies in accordance with the business rules adopted by the Joint Board.
- 7.5.2 Assist in the development and implementation of uniform agreements to be used in the ORCA System, including but not limited to agreements used by Business Account Lead Agencies.
- 7.5.3 Respond to all customer inquiries and transaction requests related to ORCA functionality regardless of the services actually used by the customer. Direct the customer to other Agencies for assistance.
- 7.5.4 As applicable, participate in the ORCA regional call center operations.

7.6 Agency Duties under ORCA Vendor Contracts. The Agencies have additional responsibilities that are set forth in the Systems Integrator Contract and will or may be set forth in other ORCA Vendor contracts. The Agencies shall apprise themselves of the terms and conditions of all ORCA Vendor contracts and take all necessary and appropriate actions to fulfill all responsibilities, whether described in this Agreement, in the SI or other ORCA Vendor contracts. In the event that the Agency believes that

there is a conflict between its responsibilities described in this Agreement and those ORCA Vendor contracts, the Agency shall bring said conflict to the attention of the ORCA Director. In the event the matter is not resolved, it shall be referred to the ORCA Steering Committee, and if still not resolved, to the Joint Board for resolution. The Agency shall abide by the decision of the Joint Board.

7.7 Agencies Serving as Business Account Lead Agencies. An Agency may act as a Business Account Agreement Lead Agency or Participating Agency subject as specified in the Business Account Program Policy adopted by the Joint Board, and under business rules adopted by the Joint Board.

8.0 FINANCIAL PROVISIONS

8.1 General Provisions. By entering into this Agreement, each Agency agrees to pay the capital and operating costs of the ORCA System for the duration of the System Integrator (SI) Contract or other ORCA Vendor contracts.

8.1.1 Utilization Period. Having invested in the development and implementation of the ORCA System, the Agencies are committed to utilizing the system for at least eleven (11) years. By entering into this Agreement, each Agency agrees to fund its own agency-specific costs and to pay its percentage of regionally-shared costs.

8.1.2 ORCA Program Costs. ORCA Program Costs will include agency-specific costs and regionally-shared costs as approved by the Joint Board. Agency-specific costs shall be budgeted and managed by the individual Agencies incurring those costs.

8.1.3 Uncompensated Contributions. The cost of goods and services which benefit all Agencies, when provided by an Agency and designated as uncompensated contributions, will not be considered regionally-shared costs. Provided, however, an Agency may terminate any contribution designated as such after providing written notice to the other Agencies at least eighteen (18) months in advance of the budget year in which the termination will take effect.

8.2 ORCA Capital Budget. The ORCA Project Team manager shall prepare for approval the project scope and capital budget that includes the ORCA Capital Costs for the design, development, testing and implementation of the replacement ORCA System. For ORCA System enhancements and capital projects, the ORCA Director in coordination with the ROOT and Agency Business Managers shall prepare project scope and capital budget for approval by the Joint Board.

8.3 Capital Shares. The regional cost sharing methodology for calculating percentage shares to be paid by each Agency, is described in the ORCA Capital Budget Policy, as adopted by the Joint Board. The capital shares for each project phase shall not be subject to revision, unless approved by the Joint Board, or as necessary to accommodate the addition of a new Agency, or the withdrawal or removal of an Agency from this Agreement.

8.4 ORCA Operating Budget. The ORCA Director, in coordination with the ROOT and Agency Business Managers, will prepare each annual ORCA Operating Budget with the regionally-shared costs for the following year, for approval by the Joint Board by June 1 or such other date as may be established by the Joint Board. Amendments to the adopted ORCA Operating Budget will be submitted to the ORCA Director for approval by the Joint Board. The ORCA Director is responsible for monitoring expenses to ensure that any changes required to the adopted Budget are approved by the Joint Board prior to the commitment of funds in excess of the adopted annual budget.

8.5 Operating Shares. The regional cost sharing methodology for calculating percentage shares to be paid by each Agency for regionally-shared operating costs are set forth in the ORCA Operating Budget Policy, as adopted by the Joint Board.

8.6 Budget Amendments. Any amendment to the ORCA Capital Budget or ORCA Operating Budget shall be subject to approval by Joint Board and subject to the amounts committed by each Agency.

8.7 System Investments. For capital investments such as software revisions, enhanced functionality, expansion, enhancements, replacement and repair, approved by the Joint Board as regionally-shared

costs, the capital percentage shares shall be calculated and agreed to by the Joint Board for capital projects.

8.8 Bill payment and invoicing.

- 8.8.1 Pursuant to RCW 39.34.030 (4)(b), the Joint Board shall establish a special fund(s) account(s) with the ROOT Agency on behalf of all the Agencies. The ROOT shall establish a Central Payments Account and process payments on behalf of the participating Agencies from that account. One or more of the Agencies may, at their own expense, audit the performance of the financial services provided by the ROOT under this Agreement. Upon reasonable notice, during normal working hours, ROOT staff shall provide such Agency auditors access to its facilities for copying the records of its actions and decisions while performing financial services as the ROOT.
- 8.8.2 Each Agency agrees to make payments promptly, and consistent with the deadlines set forth in business procedures established by the ROOT Agency.
- 8.8.3 The cost of agency-specific goods and services and any other agency-specific costs shall be fully paid by the requesting Agency in addition to its cost sharing commitment under this Agreement. The Agency will coordinate the payment of invoices for agency-specific costs owed to an ORCA Vendor, with the ORCA Director as necessary.
- 8.8.4 The ROOT shall not be obliged to disburse funds from the Central Payment Account unless balances in the account are sufficient to cover the disbursement. In the event that one or more agencies do not remit within the prescribed timeframes, the ROOT may disburse to an ORCA Vendor up to the amounts received in respect of that vendor's invoice (also referred to as short payment of vendor invoice).
- 8.8.5 Each Agency shall be responsible and liable to the other Agencies for interest and other costs, claims or liabilities of any kind that result from late payment by the Agency, and the late-paying Agency shall defend, indemnify and hold harmless the other Agencies from such costs, claims or liabilities resulting from the late payment. The late-paying Agency will be responsible for any late payment charges. In the event an individual Agency fails to pay its individual costs or its share of regionally-shared costs, the other Agencies may also seek a judgment against said Agency. The costs of seeking a judgment will be considered costs of the Agencies and shall become part of the ORCA Operating Budget. Any costs incurred to seek the judgment and recover costs will be charged in full against the responsible Agency.

8.9 Security Documents. The Agencies agree that the Agency executing the SI Contract or other ORCA Vendor contracts, shall be named as the sole beneficiary on any Security Documents as defined in and provided by the ORCA Vendors under the applicable vendor contract. In the event the designated Agency makes a draw on a Security Document in accordance with an ORCA Vendor contract, it shall hold the proceeds for allocation among the Agencies in accordance with the Joint Board's direction. The proceeds shall be allocated among the Agencies according to each Agency's proportionate share of the total damages or costs for which the Security Document draw is made.

8.10 Retainage. If a retainage account is created in place of a Security Document, the Agencies authorize the ROOT to manage the retainage account in the manner provided under the SI or other ORCA Vendor contracts. In the event the Joint Board authorizes a withdrawal of funds from the retainage account, the ROOT shall transfer the funds to the Central Payments Account for allocation among the

Agencies in accordance with the Joint Board's direction. The proceeds shall be allocated among the Agencies according to each Agency's proportionate share of the total damages or costs for which the withdrawal is made.

8.11 Business Account Lead Agencies. Business Account Lead Agencies may elect to have business account invoicing handled centrally by the ROOT. For a Business Account whose invoicing is handled through the Lead Agency with which it has entered into a Business Account agreement, the Business Account Lead Agency is responsible for collecting such payments in compliance with established settlement rules.

8.12 Transition Period.

8.12.1 The Transition Period shall commence when the Systems Integrator's back-office becomes the system of record and ends at Final System Acceptance.

8.12.2 During the Transition Period, the ORCA Capital Budget and ORCA Operating Budget for the ORCA System will be in effect concurrently with the legacy ORCA Operating Budget. In the event that there is a question as to which budget applies to a given cost, the Joint Board will make the determination.

9.0 FARE REVENUE

9.1 Revenue Apportionment. All revenue received from ORCA sales will be distributed from ORCA Accounts held by the Regional ORCA Operations Team (ROOT) in accordance with the following:

- 9.1.1 Revenue received from the sale of products usable only on a single Agency's transportation service shall be remitted to that Agency.
- 9.1.2 Revenue received from the sale of E-purse value will be deposited to the E-purse Account held by the ROOT on behalf of the Agencies and shall be distributed to each Agency according to the use made of said E-purse value for payment of fare for travel on each Agency's transportation services.
- 9.1.3 Revenue received from the sale of regional pass products valid on multiple Agencies shall be distributed among those participating Agencies in proportion to the total value of the transportation services used on each Agency during the pass validity period.
- 9.1.4 Revenue received from the sale of Business Passport products which are valid on multiple Agencies shall be distributed among those Agencies based on the pricing methodology selected by the business entity contracting for transit services.
- 9.1.5 An Agency may submit a claim for fare revenue not distributed to it through the revenue apportionment process. A claim shall state the reason the Agency believes it is entitled to the revenue claimed and shall be supported by documentation. All claims will be reviewed by a committee established by the Joint Board, which shall make a recommendation to the ORCA Director. If a claim is approved by the ORCA Director, it will be processed by the ROOT Agency.

9.2 Funds Settlement.

- 9.2.1 Each Agency shall establish a Settlement Account pursuant to Section 7.1.9. Each Agency shall establish an automated clearinghouse (ACH) authorization with its own bank to allow the transfer of funds to and from each Agency's Settlement Account and the ORCA Accounts held by the ROOT, and authorize the ROOT to initiate daily net settlements between the various Agency accounts and the ORCA Accounts pursuant to Section 8.0. Agencies shall designate the bank accounts that will be used in the net settlement process, and establish the ACH authorization as outlined in Section 8.0 of this Agreement.
- 9.2.2 The Agencies acknowledge that the ROOT will use a net daily settlement process to simplify and reduce the number of transfers necessary to accomplish reconciliation.
 - 9.2.2.1 Revenues received from sales of pass products will be distributed to the Agencies' accounts approximately thirty (30) days after the end of the month in which the pass was valid.
 - 9.2.2.2 Revenues received from sales of E-purse will be distributed to the Agencies' bank accounts approximately three (3) days after the value was used for fare payment. Transactions involving transfers between Agencies will be subject to a reapportionment process thirty (30) days following the transaction.

9.3 Transactions Not Related to Public Transportation. The provisions of this Agreement assume that all load and use transactions related to the ORCA System are related to public transportation.

9.4 Sales Transactions Processing. Except as otherwise specified below, the ROOT shall be the merchant of record for all sales of ORCA Cards and ORCA Products processed through the ORCA Central Payment Gateway. Credit or debit card fees charged for all transactions processed through the ORCA Central Payment Gateway will be regional costs, shared by the participating agencies in accordance with applicable operating shares.

9.4.1 Agency sales channels include:

9.4.1.1 Over-the-counter Transactions. For the purchase of products at Agency customer service offices using credit or debit cards will be processed through the ORCA Central Payment Gateway with the exception of sales processed by Washington State Ferries. If an Agency receives payment for ORCA Cards and/or ORCA Products in the form of cash, check, or money order, the Agency shall deposit such payments into the Agency's Settlement Account for allocation under this Agreement. The transacting Agency shall bear the risk of fraud, dishonored checks for insufficient funds.

9.4.1.2 Vending Machine (VM) Transactions. For the purchase of products at vending machines using credit or debit card will be processed through the ORCA Central Payment Gateway. Payments made in the form of cash shall be deposited into the account held by the ROOT using an armored car revenue services agency.

9.4.1.3 Call Center Transactions. For the purchase of products at Agency call centers, using credit or debit cards, will be processed through the ORCA Central Payment Gateway.

9.4.1.4 Mail Transactions. The Regional Service Provider operating the Regional Mail Center will process all mail transactions. Payments for ORCA Cards or Products using credit or debit cards will be processed using the ORCA Central Payment Gateway. If an Agency receives payment for ORCA Cards and/or ORCA Products in the form of cash, check, or money order, the Agency shall deposit such payments into the Agency's Settlement Account for allocation under this Agreement. The transacting Agency shall bear the risk of fraud, dishonored checks for insufficient funds.

9.4.1.5 Website and Mobile Application Transactions. Transactions for the purchase of products on the ORCA Website or Mobile Application, including Autoload transactions, using credit or debit cards will be processed through the ORCA Central Payment Gateway.

9.4.2 Sales channels processed outside of the ORCA Central Payment Gateway include:

9.4.2.1 Washington State Ferries. WSF shall act as the merchant of record for all transactions processed at WSF terminals. Credit or debit card fees charged to WSF for over-the-counter transactions are the responsibility of WSF. In addition, WSF shall bear the risk of fraud, including chargebacks, unless WSF transfers the risk to its merchant bank.

9.4.2.2 Retail Network Provider. Per terms of the agreement with the Retail Network provider agreement, the retail providers shall be the merchant of record, including bearing responsibility for credit/debit card fees and any other fees and the risk of fraud, dishonored checks for insufficient funds and other payment reversals and failures, including chargebacks, for transactions occurring on its premises.

10.0 SECURITY

10.1 Committee Charter. The ORCA Security Committee Charter, as adopted by the Joint Board per Section 4.0, outlines the structure, roles, responsibilities and authorities associated to the ORCA Security Committee (OSEC). The OSEC is tasked with the oversight of information security and risk management activities for the ORCA System.

10.2 Regional Security Engineer. Under the Regional ORCA Operations Team (ROOT), the Regional Security Engineer (RSE) will serve as the technical expert representing the Agencies in the technical evaluation of all proposed actions and activities that may have an impact on the security of the ORCA System. Duties and responsibilities of the RSE will be described under the Service Level Agreement between the ROOT and the Agencies.

11.0 ADDITION OF NEW PARTIES

The Joint Board may approve the addition of new parties to this Agreement and the terms and conditions for such addition. New parties may include full partner agencies, affiliate agencies, or other third parties. Notwithstanding the foregoing, new parties shall be admitted under the following conditions. Any charge assessed to a new party shall be allocated among the original Agencies according to the capital shares applicable during the development and implementation of the ORCA System.

11.1 Full partner agencies will have financial and operating obligations as stated below. Rights of a full partner agency include representation at the Joint Board with equal voting rights as well as full access to the ORCA System and reporting.

11.1.1 A full partner agency shall (1) pay for its equipment and for all additional costs of integration into the ORCA System, (2) be assessed a charge to recover a share of the planning, design and implementation costs incurred by the originating Agencies, and (3) pay a prorata share of annual operations and maintenance costs.

11.1.2 A full partner agency shall (1) provide for an Agency Business Manager, (2) participate in regional committees and the regional call center, and (3) operate an ORCA customer service office if applicable.

11.2 Affiliate agencies must be sponsored by a current Agency and will have financial and operating obligations as stated below. The affiliate agency will receive their apportioned revenues and any applicable reports provided by the sponsoring agency.

11.2.1 An affiliate agency shall pay for (1) its equipment and for all additional costs of integration into the ORCA System, (2) an entry fee into the ORCA System, and (3) a monthly fee to defray regional costs.

11.2.2 An affiliate agency shall operate any ORCA equipment in accordance with the requirements of the sponsoring agency and the ORCA System.

11.3 Other third parties shall be admitted under policies established by the Joint Board.

12.0 INTELLECTUAL PROPERTY

12.1 Use of Terms from System Integrator (SI) or ORCA Vendor Contracts. The capitalized terms used in this section shall have the same meanings as have been given those terms in the SI Contract or in other ORCA vendor contracts. In addition, for purposes of this Agreement, the terms "intellectual property" and "IP" shall include the ORCA-related trademarks that have been or will be registered by the Regional ORCA Operations Team (ROOT).

12.2 Exercise of Agency License Rights. Each Agency agrees that it will exercise its license rights in accordance with the license provisions of the SI Contract as regards any intellectual property provided under said SI Contract ("IP"), including Contract Deliverables, IP of Contractor, INIT Software, Third Party Software and Technical Data related to all such IP.

12.3 Installation of Additional Applications. Each Agency that desires to install additional applications onto its ORCA devices shall, in conjunction with the ORCA Director, obtain the SI or other ORCA Vendor certification in accordance with the process outlined in the vendor contract prior to installing such additional applications.

12.4 Agency Protection of Intellectual Property. Each Agency shall take reasonable measures, to the extent required by the SI or other ORCA Vendor contracts, and other provisions of this Agreement, to protect any IP and IP materials related to same from being disclosed to third parties, other than those to whom sublicenses and transfers are permitted by the license rights granted under the SI or other ORCA Vendor contracts. Such measures shall include (a) restricting access to such IP and IP materials to those of its employees with a reasonable need to know; (b) requiring such employees to sign a nondisclosure agreement; (c) requiring any permitted third parties to sign nondisclosure agreements requiring that they also undertake reasonable protection measures; (d) promptly enforcing any violations of such agreements; (e) copying, using and licensing others to use ORCA-related trademarks only in accordance with policies and rules established by the Joint Board; and (f) reporting any violations to the ORCA Director as soon as is practicable.

12.5 Agency Protection of Use Data. Each Agency shall comply with such policies and procedures as are established by the Joint Board regarding retention and disclosure of use data and use data reports.

12.6 Escrow Fees. Each Agency shall pay its share of the fees related to the escrow agreements, which will be in effect during the term of the SI Contract. During development and implementation of the ORCA System, the Agencies' shall pay the escrow fee per the capital shares. For subsequent years, an Agencies' share of the annual escrow fees shall be paid per the operating shares in effect for that year.

12.7 No Assignment of IP. Notwithstanding any provision in the SI or other ORCA Vendor contracts or this Agreement, each Agency agrees that it shall not grant or transfer any rights in IP related to the ORCA System without the written approval of the ORCA Director.

12.8 IP Indemnity. Each Agency shall defend, indemnify and hold harmless the other Agencies against any and all infringement actions, claims for license fees or royalties, suits, actions, and liabilities of any kind whatsoever, including attorneys' fees and costs, which arise out of or are in any way related to the negligent or intentional act of an Agency, its employees, agents or contractors in using, transferring, sublicensing or otherwise releasing any IP, IP Materials related to same, or information in violation of any of the provisions of this Section 12.0 or the SI or other ORCA Vendor contracts.

12.9 Termination of IP License; Termination of Agreement. In the event of an Agency's withdrawal or removal from this Agreement, the Agency shall deliver to the ORCA Director, and relinquish its license

rights in, all IP created or provided for the ORCA System except to the extent such IP (a) was created or provided solely for the use or benefit of the withdrawing Agency; or (b) constitutes Third Party IP individually licensed to the withdrawing Agency. In the event this Agreement is terminated, each Agency shall retain any license rights for which it has paid its share of the costs.

12.10 Survival of Provisions. The provisions of this Section 12.0 shall survive and remain applicable to the Agencies notwithstanding any termination or expiration of this Agreement and notwithstanding an Agency's withdrawal or removal from this Agreement. However, an Agency shall obtain no rights to any IP created after an Agency withdraws or is removed from this Agreement.

13.0 LEGAL REPRESENTATION

13.1 General.

- 13.1.1 Legal services related to the ORCA System may be obtained from various sources, including without limitation:
- 13.1.1.1 Staff of the designated Regional ORCA Operations Team (ROOT) may be advised and represented by lawyer(s) of the ROOT Agency in accordance with Subsection 13.2;
 - 13.1.1.2 Staff of a designated Regional Service Provider may be advised and represented by lawyer(s) of the Regional Service Provider in accordance with Subsection 13.3;
 - 13.1.1.3 The Joint Board may retain legal counsel in accordance with Subsection 13.3;
 - 13.1.1.4 The Agencies may jointly retain legal counsel in accordance with Subsection 13.4; or
 - 13.1.1.5 Each Agency's legal counsel may provide advice to all the Agencies on a particular matter.
- 13.1.2 Notwithstanding the possible provision of legal services in connection with the Agencies' common interests as provided by one or more of the lawyers identified in Subsection 13.1.1, nothing in this Agreement shall preclude an Agency from employing or retaining its own lawyer to advise and represent it in relation to its individual interests.
- 13.1.3 The Agencies expect they will share common interests on matters related to the ORCA System. In order to avoid duplication of effort and costs for legal services needed in support of their common interests, the Agencies desire to be able to share the legal services provided by their various lawyers, without any waiver of confidentiality doctrines and privileges with respect to persons or entities other than the Agencies. Absent a conflict of interest between any of the Agencies on a specific matter, the Agencies may request that lawyer(s) representing one or more of the Agencies also represent the common interests of all Agencies. In such instances, the Agencies agree that communications related to their common interests, whether to, from or between lawyers representing one or more of the Agencies, may be shared on a confidential and privileged basis among each Agency's Joint Board representatives, lawyers, and employees (whether employees of the Agency acting in its individual capacity or in its capacity as the ROOT or as a Regional Service Provider), to the same extent as privileged or other confidential communications with the Agency's own lawyer. Failure to mark a communication as "confidential" shall not constitute a waiver of any confidentiality doctrines and privileges.
- 13.1.4 Each Agency and any of its Joint Board representatives, lawyers, and employees that are privy to communications to and from any lawyer employed or retained by one or more Agencies, as described in Subsection 13.1.1, and related to the ORCA System shall treat such communication, if marked as "confidential," as privileged and confidential unless the privilege is waived by action of the Joint Board or disclosure is otherwise required under

law. This obligation to maintain communications with a lawyer as privileged and confidential shall survive: (a) any termination of this Agreement; (b) any withdrawal from this Agreement by an Agency; (c) any involuntary removal of an Agency under this Agreement; (d) any removal and/or replacement of the ORCA Director and his/her staff; and (d) any withdrawal or termination of such lawyer, including but not limited to withdrawals or terminations due to conflicts of interest.

13.1.5 Any lawyer providing legal services to the Joint Board, the ROOT, a Regional Service Provider or all the Agencies is subject to the Rules of Professional Conduct (RPC) including but not limited to Rule 1.7, which provides that a lawyer must decline or withdraw from representation that involves a conflict of interest unless the affected clients provide informed, written consents for the lawyer to undertake or continue the representation. In the event a conflict of interest or potential conflict of interest is perceived to exist between any of the Agencies, the lawyer shall not continue to provide legal services on such matter to the Joint Board, a Regional Service Provider or all the Agencies unless and until the perceived conflict or potential conflict has been resolved. The Agencies shall endeavor to expeditiously resolve any real or potential conflicts of interest to enable such lawyer to resume provision of legal services to the Joint Board, the ROOT, a Regional Service Provider or all the Agencies. The resolution of a conflict may require the Agencies to sign informed consents in accordance with the RPC. In the event not all of the Agencies are willing to sign informed consents in accordance with the RPC, the Agencies understand and agree that representation by the a lawyer on the matter in conflict shall cease.

13.2 Legal Counsel for Staff Assigned to the ROOT or Regional Service Providers.

13.2.1 Unless legal services are obtained from other sources pursuant to Subsection 13.1.1, the staff assigned to perform the functions of the ROOT or of a Regional Service Provider may obtain legal services from that Agency's lawyer(s) as part of the support provided by that Agency. Such services shall include but are not limited to advising on contract administration, change orders and claims; drafting and reviewing documents; research and advice on applicable statutes and regulations; and advising on responses to requests for disclosure of public records. In the event a person assigned to perform the functions of the ROOT or of a Regional Service Provider perceives that the Agencies are not in accord on how to proceed on matter and he/she is not able to reach consensus among all the Agency representatives, he/she shall submit the question or proposed action to the Joint Board for resolution prior to acting.

13.2.2 Because the staff assigned to perform the functions of the ROOT or the Regional Service Provider are responsible for supporting the common interests of the Agencies as expressed in this Agreement and as determined by the Joint Board, the Agencies expect that their interests will be unified on matters for which such persons seek legal services. Accordingly, each Agency agrees that the provision of legal services by a lawyer to the staff assigned to perform the functions of a Regional Service Provider shall be considered a matter involving the Agencies' common interests. Subject to the provisions of Subsection 13.3.3 below, the Agencies waive any actual or potential conflicts as against the ROOT or Regional Service Provider and its lawyer with regard to the representation of the common interests of all the Agencies by said ROOT or Regional Service Provider's lawyer. Notwithstanding the foregoing, an Agency that is also the ROOT or a Regional Service Provider may employ its lawyer to advise and represent the Agency, individually and not jointly, on matters related to the ORCA System unless a conflict arises that is not

waived by the Agencies and the lawyer cannot represent the ROOT or the Regional Service Provider without violating his/her duties under the professional rules.

- 13.2.3 All attorney-client communications between such lawyer and the staff assigned to perform the functions of the ROOT or the Regional Service Provider shall be available to the Joint Board members and each Agency on a privileged and confidential basis and may be shared among the Agencies as if they were a single entity vis-a-vis any other person or entity. Such communications may be shared, subject to the restrictions in Subsections 13.1.3, 13.1.4 and 13.1.5.

13.3 Legal Counsel for the Joint Board.

- 13.3.1 The Joint Board may from time to time retain a lawyer to provide it, as a board, with legal services related to the ORCA System, including but not limited to matters related to the duties and obligations of the Joint Board, the ROOT or the Regional Service Provider. Any agreement for such Joint Board legal services shall be entered into by all of the Agencies. The ROOT shall administer the payment process for such services in accordance with Section 8.0 and in accordance with the Budget established by the Joint Board. The Agencies shall share the costs of such legal services in accordance with the percentages in effect at the time the services are performed, as determined in accordance with the budget policy adopted by the Joint Board.
- 13.3.2 Each Agency expressly acknowledges and agrees that such lawyer shall have the obligation to represent the joint interests of the Agencies as expressed in this Agreement and as determined by the Joint Board in accordance with this Agreement. Each individual Agency, and its Joint Board representative(s), shall be considered to have a client relationship with said lawyer but the Agencies acknowledge and agree that they share a joint client relationship with the other Agencies and are not entitled to, and shall not seek, individual advice or representation from such lawyer.
- 13.3.3 Specific requests for legal services shall be made to such lawyer by the Joint Board's chair, vice-chair or other Board member designated to be the Joint Board's point of contact. All attorney-client communications between such lawyer and one or more Joint Board members shall be available to the other Joint Board members and each Agency on a privileged and confidential basis and may be shared among the Agencies as if they were a single entity vis-à-vis any other person or entity. Such communications may be shared, subject to the restrictions in Subsection 13.1.3, 13.1.4 and 13.1.5.
- 13.3.4 Any lawyer retained, or proposed to be retained, for the provision of legal services to the Joint Board is subject to the Rules of Professional Conduct (RPC) including but not limited to Rule 1.7, which provides that a lawyer must decline or withdraw from representation that involves a conflict of interest unless the affected clients provide informed, written consents for the lawyer to undertake or continue the representation. In the event a conflict of interest or potential conflict of interest is perceived to exist between any of the Agencies with regard to a matter covered by this Agreement, and not all of the Agencies are willing to sign informed consents in accordance with the RPC, the Agencies understand and agree that representation by the Joint Board's lawyer on the matter in conflict shall cease. Each Agency, individually or in combination with one or more other Agencies not in conflict, may obtain legal advice and representation from another lawyer on such matter at their own expense and outside of this Agreement.

13.4 Representation of Agencies in Contested Matters. In the event one or more of the Agencies is the subject of a lawsuit, complaint or other contested matter, the Joint Board will determine whether the matter affects the common interests of all the Agencies. The Joint Board may determine in its sole discretion whether joint or separate representation is desirable and approve a budget for joint representation on such matters. Where joint representation is authorized, the Joint Board may designate a Joint Board member or an Agency representative to supervise the lawyer retained to represent the Agencies. Communications between the lawyer, the Joint Board and the Agencies on the matter will be conducted in a manner consistent with Subsection 13.1 and 13.2.

13.5 No Liability. Notwithstanding any provision of this Agreement to the contrary, the Agencies agree to hold each other harmless from and against any and all claims, demands, lawsuits or liability of any kind arising out of the acts or omissions of a lawyer employed or retained to provide joint representation of all Agencies including without limitation a lawyer for the ROOT or Regional Service Provider, on a matter related to the ORCA System.

14.0 LEGAL RELATIONS

14.1 No Third-Party Beneficiaries, Joint Venture or Partnership. It is understood and agreed that this Agreement is solely for the benefit of the Agencies and gives no right to any other person or entity. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of an Agency or any of an Agency's contractors or consultants shall be deemed, or represent themselves to be, employees of any other Agency for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded by virtue of their employment. No Agency assumes any responsibility for the payment of any compensation fees, wages, benefits or taxes to or on behalf of any other Agency's employees.

14.2 Legal Compliance. The Agencies shall comply, and shall ensure their respective contractors comply, with all federal, state and local laws, regulations and ordinances applicable to their respective obligations under this Agreement.

14.3 General Indemnity to Other Agencies. Except as otherwise provided in Section 5.0 for the Regional ORCA Operations Team (ROOT) or in the capacity of a Regional Service Provider, each Agency, to the maximum extent permitted by law, shall defend, indemnify and hold harmless the other Agencies and all of their officials, employees, principals and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property, which arise out of, are connected with, or are due to any intentional or negligent acts or omissions of the indemnifying Agency, its contractors (other than the SI or other ORCA Vendor contractors), and/or employees, agents, and representatives related to the Agency's responsibilities and other work referred to in this Agreement; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply to any work under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of Agencies, their contractors or employees, agents, or representatives, the indemnification applies only to the extent of the negligence of each Agency, its contractor or employees, agents, or representatives. Each Agency specifically assumes potential liability for actions brought by its own employees against any other Agency and for that purpose the indemnifying Agency specifically waives, as respects the other Agency only, any immunity under the Worker's Compensation Act, RCW Title 51; and each Agency recognizes that this waiver was the subject of mutual negotiation and specifically entered into pursuant to the provision of RCW 4.24.115, if applicable. Each Agency shall reasonably notify the other Agencies of any and all claims, actions, losses or damages that arise or are brought against that Agency relating to or pertaining to this Agreement. In the event an Agency incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Section against any other Agency, all such fees, costs and expenses shall be recoverable by the prevailing Agency.

14.4 Claims by Third Parties. In the event a person or entity not party to this Agreement, other than the Federal Transit Administration, submits a claim relating to or pertaining to this Agreement to the Agencies or any individual Agency for costs, damages or liabilities of any kind pursuant to the such third party's contract with the Agencies or an Agency, or in tort or any other legal theory, or based on the actions of the ROOT or a Regional Service Provider, the Agencies agree to meet for the purpose of developing a joint defense plan. The Agencies agree to cooperate with each other as necessary in responding to and defending against all such actions. In the event that resolution of the claim, whether by negotiation, dispute review board recommendation, mediated settlement or judicial order, results in additional costs to the Agencies, said additional costs will be shared by the Agencies, except to the extent that the additional costs are directly attributable to an individual Agency **and except to the extent that Section 5 of this Agreement applies to the claim.** Such additional costs to the Agencies may include, but are not limited to, the fully allocated labor cost of the staff and attorneys involved in the response or defense of all such actions and any outside counsel or consultant resources deemed necessary by the Agencies. In the event that the additional costs are attributable to an individual Agency **and Section 5**

does not apply to them, said Agency is responsible for such costs and shall pay same within thirty (30) days of the claim's resolution.

14.5 Waiver of Consequential and Certain Other Damages. Notwithstanding any provision of this Agreement, the Agencies waive all claims against each other (and against each other's officers, directors, employees, managers, members, shareholders, parent company, affiliates, contractors (other than the SI Contractor), subcontractors, consultants, agents, suppliers and vendors) for any consequential, incidental, indirect, special, exemplary or punitive damages (including, but not limited to, loss of actual or anticipated profits, revenues or product, loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use; or increased cost of capital), and regardless of whether any such claim arises out of breach of contract, guarantee or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory. Any consequential, incidental, indirect, special, exemplary or punitive damages incurred by any Agency in relation to a third party shall, for all purposes of this Agreement, be deemed consequential, incidental, indirect, special, exemplary or punitive damages in relation to any claim brought by an Agency against any other Agency under this Agreement. Further, this waiver of consequential, incidental, indirect, special, exemplary or punitive damages shall extend to claims against any Agency arising from its role as the ROOT or as a Regional Service Provider.

14.6 Specific Performance. In the event an Agency fails to perform an obligation under this Agreement, the other Agencies or any one of them shall have the right to bring an action for specific performance, damages and any other remedies available under this Agreement, at law or in equity.

14.7 No Obligation for Other Agency Employees except as Stated. Except for the reimbursement and other express obligations under this Agreement, no Agency by reason of this Agreement assumes any responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of any other Agency, including its employees, representatives, agents, contractors or suppliers.

14.8 Preservation of Rights and Remedies. The Agencies' rights and remedies under this Agreement are in addition to any other rights and remedies provided by law.

14.9 Survival of Provisions. The provisions of this Section 14.0 shall survive and remain applicable to each of the Agencies notwithstanding any termination or expiration of this Agreement and notwithstanding an Agency's withdrawal or removal from this Agreement.

15.0 TERMINATION, WITHDRAWAL AND REMOVAL

15.1 Termination by Joint Board. The Joint Board may terminate this Agreement in its entirety by the unanimous affirmative vote of all Agency representatives.

15.2 Notice of Agency Withdrawal. In the event that an Agency believes it has cause to withdraw from this Agreement and terminate its participation in the Systems Integrator (SI) or other ORCA Vendor contracts, it shall give written notice to the Joint Board, which shall include the following information, as a minimum:

- 15.2.1 An explanation of the circumstances causing the Agency to believe withdrawal is necessary;
- 15.2.2 A description of the probable impacts on the other Agencies from the withdrawal;
- 15.2.3 A description of the probable impacts to the scope, schedule and budget of the SI or other ORCA Vendor contracts;
- 15.2.4 A description of the alternatives to withdrawal that have been evaluated by the Agency; and
- 15.2.5 A proposed withdrawal work plan that will identify all necessary actions which need to be undertaken to effect the withdrawal.

15.3 Joint Board Action on Proposed Withdrawal. Upon receipt of the above-described notice and information, the Joint Board will convene a special meeting to review and consider the request for withdrawal. The Joint Board will develop a report of its Findings and Recommendations within thirty (30) days of its special meeting, which shall be presented to the withdrawing Agency's governing board. This report shall include as a minimum:

- 15.3.1 A description of the estimated impacts on the Agencies, separately and as a whole, from the withdrawal;
- 15.3.2 A description of the estimated impacts to the scope, schedule and budget of the SI or other ORCA Vendor contracts, including the costs to modify the ORCA System to effect such withdrawal as well as costs that will need to be re-apportioned to the remaining Agencies;
- 15.3.3 A description of the alternatives to withdrawal that have been evaluated by the Agency and the Joint Board;
- 15.3.4 A recommendation regarding either:
 - 15.3.4.1 A proposed withdrawal work plan that will identify all necessary actions which need to be undertaken to effect the withdrawal; or
 - 15.3.4.2 Proposed alternatives to the withdrawal.

15.4 Agency Decision on Withdrawal. Upon receipt of the Joint Board's Findings and Recommendations, the withdrawing Agency's governing board shall review the information contained therein and decide whether to withdraw subject to the terms and conditions set forth by the Joint Board,

including an assessment of any reasonable costs (to include assessment rationale, assumptions and documentation) that shall be re-apportioned to the Agencies and/or paid by the withdrawing Agency.

15.5 Retention of Cost Obligations and Damages. In addition to being liable for its share of ORCA System costs, to and including the effective date of withdrawal, the withdrawing Agency shall be solely liable for actual damages and additional costs to the other Agencies arising out of or resulting from such withdrawal. The Joint Board shall determine the amount of such damages and additional costs and notify the withdrawing Agency of the amount owing to each of the Agencies. The determination of the Joint Board shall be final subject to the dispute resolution procedures set forth elsewhere in this Agreement. The withdrawing Agency shall pay the amount within ninety (90) days after the effective date of withdrawal.

15.6 Dealings with ORCA Vendors upon Withdrawal. No Agency shall communicate a notice of termination to an ORCA Vendor prior to the Joint Board's and Agency governing boards' completion of the processes set forth in this Section 15.0. Following approval from the Joint Board, the ORCA Director shall communicate to the ORCA Vendor such Agency's notice of termination.

15.7 Involuntary Removal of Agency. Notwithstanding the voluntary withdrawal and termination provisions in Subsections 15.3 through 15.7, the Joint Board may, for cause, remove an Agency and terminate the Agency's rights to participate in the ORCA System. Cause may include, but is not limited to, failure to act in good faith in participating in the Joint Board and willful, arbitrary failure to approve and appropriate funds necessary to pay the Agency's share of the costs under this Agreement. If an Agency brings a charge against another Agency under this Subsection 15.7, neither the Agency bringing the charge nor the Agency against which the charge is brought shall have any voting rights on the issues raised before the Joint Board. To remove an Agency under this Subsection 15.7, there shall be a unanimous vote in support of removal by all Agency representatives to the Joint Board, except for the representatives of the charging and charged Agencies. An Agency that is removed from the ORCA System under this Subsection 15.7 shall pay such costs as may be assessed by the Joint Board taking into account all costs to the other Agencies caused by, arising out of or resulting from such removal.

16.0 GENERAL PROVISIONS

16.1 Effective Date. This Agreement shall take effect on the date when all Agencies have signed the Agreement and shall remain in effect unless terminated in accordance with the provisions of Section 15.0.

16.2 Filing of Agreement. Pursuant to RCW 39.34.040, prior to its entry into force, this Agreement shall be filed with the auditors of the counties of Snohomish, Pierce, Kitsap and King or, alternatively, listed by subject on an Agency's web site or other electronically retrievable public source.

16.3 Time of the Essence. The Agencies recognize that time is of the essence in the performance of the provisions of this Agreement.

16.4 Agencies Not Relieved of Statutory Obligation. Pursuant to RCW 39.34.030(5), this Agreement shall not relieve any Agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by the Joint Board, the performance may be offered in satisfaction of the obligation or responsibility.

16.5 Nondiscrimination. The Agencies shall comply with the nondiscrimination requirements under federal and state laws, regulations and grants applicable to the ORCA System. Nondiscrimination requirements shall include, but not be limited to, contractors, consultants and other third party vendors engaged on the ORCA System.

16.6 Reservation of Rights under Previous Agreements. The Agencies reserve any rights, powers, privileges, authority, liabilities, obligations and duties set forth in or provided by any previous agreement executed by an Agency related to activities, actions and decisions precedent to the ORCA System. This Agreement shall not be construed in derogation of any such rights, powers, privileges, authority, liabilities, obligations and duties.

16.7 No Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Agency of Agencies claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all Agencies.

16.8 No Assignment. No Agency shall transfer or assign a portion or all of its responsibilities or rights under this Agreement, except with the prior authorization of the Joint Board.

16.9 Maintenance of Records; Right of Access to Records. Each Agency, when acting in its individual capacity and when acting as the Regional ORCA Operations Team (ROOT) or as a Regional Service Provider, shall establish and maintain accounts, and keep records and documents, as required by state law and grant provisions and in accordance with such policies, procedures and retention schedules as are established by the Joint Board. The ORCA Director will advise the Joint Board of what records need to be retained by individual Agencies, the ROOT and Regional Service Providers. Any accounts, records and documents related to matters under this Agreement shall be subject to inspection, review or audit by the Joint Board or any Agency.

16.10 Public Disclosure. Each Agency shall be responsible for responding to public disclosure requests addressed to the specific Agency in accordance with the Public Disclosure Act (RCW 42.56) and such procedures as may be established by the Joint Board.

16.11 Ownership of Tangible Property. Tangible property paid for by an Agency under this Agreement shall be owned and in the care and custody of the Agency. Each Agency shall take all reasonable and necessary actions to protect such property. Each Agency shall comply with requirements of grant agencies for the proper management of such property. The Joint Board shall not be deemed to own any property. In the event an Agency withdraws or is terminated from participation in this Agreement or if this Agreement is terminated, the Agency shall retain all property purchased by it or interests in property to the extent it has paid its share of the costs. Disputes about ownership of property shall be presented to the Joint Board.

16.12 Dispute Resolution. If one or more Agencies believes another Agency has failed to comply with the terms of this Agreement, the affected Agencies shall attempt to resolve the matter informally. If the Agencies are unable to resolve the matter informally, it shall be forwarded for discussions by the highest executive of each Agency. If this process fails to resolve the matter within thirty (30) days after such referral, except as expressly set out elsewhere in this Agreement where referral to the Joint Board is required for final resolution, an Agency may then pursue any legal remedy available to it or the Agencies may agree to submit the matter to mediation. If the Agencies submit the matter to mediation and the matter is not resolved, then the aggrieved Agency shall be entitled to pursue any legal remedy available.

16.13 Amendment Only In Writing. This Agreement may only be amended by a written amendment that is approved by each Agency's governing board.

16.14 Notices. Notices, demands or other written communications required under this Agreement shall be submitted to the ORCA Director to be given to other Agencies, the Joint Board or both the Joint Board and other Agencies. Notice shall be in writing and addressed to the Joint Board, Agency or Agencies for whom it is intended. The ORCA Director will maintain and distribute the title and address specific to the Joint Board and the Agencies. The Joint Board representative, the Chief Executive Officer or other similar position within an Agency may change the title and address specific to the Joint Board or that Agency, by sending written notice to the ORCA Director, who will notify the Joint Board and all other Agencies.

16.15 Choice of Law; Venue. This Agreement shall be interpreted and constructed according to and enforced under the laws of the state of Washington. The Agencies agree that the Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

16.16 Limitation of Action by Third Parties. This Agreement is made and entered into for the sole protection and benefit of the Agencies hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

16.17 Integration. The Agencies agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

16.18 Counterparts. This Agreement shall be executed in counterparts, any one of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

17.0 SEVERABILITY

If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable in whole or in part by a court of competent jurisdiction, the remaining provisions or portions thereof shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, authorized representatives of the Agencies have signed their names in the space provided below.

Central Puget Sound Regional Transit Authority By: _____ Michael Harbour Deputy Chief Executive Officer Date: _____	City of Everett By: _____ Cassie Franklin Mayor Date: _____
King County By: _____ John Resha Assistant General Manager Date: _____	Kitsap County Public Transportation Benefit Area By: _____ John W. Clauson Executive Director Date: _____
Pierce County Public Transportation Benefit Area By: _____ Susan Dreier Chief Executive Officer Date: _____	Snohomish County Public Transportation Benefit Area By: _____ Emmett Heath Chief Executive Officer Date: _____
Washington State Ferries, acting through the Washington State Department of Transportation Ferries Division By: _____ Amy Scarton Assistant Secretary Date: _____	