PARTICIPATING ADDENDUM
WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION
DISCOUNTED AIR FARES
Administered by the State of Oregon (hereinafter "Lead State")

DISCOUNT AGREEMENT
Southwest Airlines
Oregon Contract Number: PA-2624
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services
(hereinafter "Participating State/Entity")

1. Scope: This addendum covers the WSCA-NASPO Discounted Air Fare contract lead by the State of Oregon for use by state agencies and other authorized entities located in the Participating **State/Entity** authorized by that state's statutes to utilize **state/entity** contracts with the prior approval of the state's chief procurement official.

2. Participation: Use of specific WSCA-NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

INDIVIDUAL CUSTOMER: Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by this Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Discount Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Discount Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

3. Participating State Modifications or Additions to Discount Agreement:
(These modifications or additions apply only to actions and relationships within the Participating Entity.)
Addition of WA State Standard Terms and Conditions. Please see Exhibit B (attached).

4. **Customer to Receive:**

- Point of sale discounts:
  - Discount amounts and segment commitments as defined in CHART 1
    - Point of sale discounts applicable to base fare before taxes and fees
    - Discount subject to termination with 3 months declining revenue
  - Southwest Airlines fare classes:
    - *Discount on Southwest Airlines applies to the fare classes "Business Select" (K), "Anytime" (Y) and Public "Wanna Get Away" within 0-7 day(s) advance purchase from the departure date. Fare classification subject to change.*
  - Southwest Airlines Markets: SEA-ALL & GEG-ALL

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- Distribution channels as defined in EXHIBIT A
  - Sabre, Apollo & SWABIZ via dedicated channels
- Training, marketing, and communication support to State of Washington Travel program

Carriers to Receive:

- Designation of Southwest Airlines as a Preferred Carrier within Customer's travel program and policy
- Month over month growth
- Copy of all communication to be shared with Southwest Airlines.
- Quarterly travel reports to include State of Washington top 100 city pairs, segments on Southwest Airlines, segments on OAL, spend on Southwest Airlines and spend on OAL so that we can track growth
- Quarterly performance reviews to ensure success of the agreement

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CHART 1

itials)

5%	WN: Business Select (K) Anytime (Y)	SEA-ALL GEG-ALL
3%	WN: Select Wanna Get Away 0-7AP	SEA-ALL GEG-AL

5. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

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Lead State

Name	Pam Johnson, Oregon Department of Administration, State Procurement Office
Address	1225 Ferry St SE U140 Salem, OR 97301-4285
Telephone	503-378-4731
Fax	503-373-1626
E-mail	pam.johnson@state.or.us

WSCA-NASPO

Name	Tim Hay
Address	201 East Main Street, Suite 1405, Lexington, Kentucky 40607
Telephone	503-931-2345
Fax	
E-mail	thay@wsca-naspo.org

Contractor

Name	Jeff Haag, Southwest Airlines
Address	PO Box 36611, HDQ-5MD 2702 Love Field Drive Dallas, TX 75235
Telephone	866-569-5793
Fax	
E-mail	jeffrey.haag@wnco.com

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Participating Entity

Name	Connie Stacy, State of Washington, Department of Enterprise Services
Address	1500 Jefferson Bldg Olympia, WA 98501
Telephone	360-407-9403
Fax	360-586-2426
E-mail	Connie.stacy@des.wa.gov

6. Authorized Travel Management Contractor: To access the discounts under this Participating Addendum, Participating State / Entity MUST have an existing Travel Management Contractor (Travel Agency) or MUST use the WSCA-NASPO Travel Center. Participating State / Entity must indicate this below.

Must select one:

[__] **WSCA- NASPO Travel Center.** Participating State / Entity will access the discounts using the WSCA / NASPO Travel Center. Participating State / Entity has executed a separate Participating Addendum with the US Travel to access the airfares in the WSCA- NASPO Travel Center Booking Tool. Contractor already has valid ARC and Psuedo City Code on file.

[_X_] **Existing Contracted Travel Agency.** Participating State / Entity will access the discounts using an existing contracted Travel Management Contractor. Participating State / Entity shall enter the valid and dedicated ARC and dedicated Pseudo City Code in Exhibit H.1 (below). The pseudo city code shall be dedicated for use by the Participating State / Entity only. **Please see Exhibit A.**

7. [Purposely left blank]

8. Discount Agreement Number:
All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum must include the Participating State contract number 02013 and the Lead State discount agreement number: PA-2624.

THE DISCOUNT AGREEMENT NUMBER PA-2624 MUST BE SHOWN ON ALL ORDER DOCUMENTS ISSUED AGAINST THIS PARTICIPATING ADDENDUM

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This Participating Addendum and the Discount Agreement number MA-2624 (administered by the State of Oregon) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Discount Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Discount Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Discount Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

Purposely Left Blank

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State\Entity: State of Washington, Department of Enterprise Services, Master Contracts and Legal Services	Contractor: Southwest Airlines
By:	By:
Name: Christine Warnock	Name: Richard Sweet
Title: Chief Procurement Officer	Title: Sr Director Marketing
Date: 9/11/13	Date: 8/30/13

[Additional signatures as required by Participating State\Entity]

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EXHIBIT A

WA AUTHORIZED ARC/IATA* TICKETING LOCATIONS

Participating State/ Entity shall provide the following information to the Contractor. Participating State/Entity shall provide a valid and dedicated ARC and dedicated pseudo city code. The pseudo city code shall be dedicated for use by the Participating State / Entity only.

Note: The State of Washington is currently in the process of rebidding our Travel Services contract therefore the information below is effective only through September 30, 2013. Updated information will be provided as soon as it becomes available

ARC/IATA	Country	Agency Name	GDS	PCC	Acct. Code/ Corp ID	Redistribution/ Branch Access Yes/No**?
1. 50905610	USA	Advance Travel	Sabre	5LTO		No
2. 50523491	USA	All Ways Travel	Worldspan	U7U	SAWBIZ 99155825	No
3. 50631954	USA	Artistic Travel	Sabre	L6B0	602497369	No
4. 50515706	USA	Azumano Travel				
5. 50559235	USA	Bellingham Travel				
6. 50834000	USA	Carlson Wagonlit	Apollo	V8J	WASH	Yes
7. 24746735	USA	Carlson Wagonlit	Apollo	Z9P	WASH	Yes
8. 24745735	USA	Carlson Wagonlit	Apollo	60N	WASH	Yes
9. 14754611	USA	Carlson Wagonit	Apollo	D12	WASH	Yes
10. 05515241	USA	Carlson Wagonlit	Apollo	BD6	WASH	Yes
11. 50728296	USA	Century Travel				
12. 50742333	USA	Classic Travel	Sabre	T960	WA	No
13. 50690931	USA	Columbia Basin Travel				
14. 50604794	USA	Colville Travel		1JR1	WA	No
15. 50814035	USA	Professional Travel	Apollo	Dq4	50814035	No
16. 50803874	USA	USTravel	Sabre	5CWG	WAT83	Yes
17. 50641625	USA	Enterprise Holidays				

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18. 50838944	USA	Global Travel	Apollo	0OJ	WA	Yes 50603405 & 13670215
19. 50886684	USA	Travel Center	Worldspan	W3x		Yes 50584306/PCC Of O75
20. 50633564	USA	Journey Travel				
21. 50730595	USA	Lake City Travel	Sabre	G5A0	91-1097347	No
22. 50744260	USA	Love Travel	Apollo	IT3		No
23. 50770436	USA	McKenzie Travel	Sabre	G8y1	50770436	No
24. 13779415	USA	Neely's Travel				
25. 50783456	USA	Passport Travel	Amadeus	Sea1s216c	99502885	No
26. 50535564	USA	Scan East Travel	Apollo	TF8		No
27. 50856820	USA	STA Travel				
28. 50658963	USA	Sundin Travel	Apollo	S2u	?	No
29. 50867983	USA	Sunrise Travel	Apollo	blank	91-1004621	No
30. 50686215	USA	Tangerine Travel	Apollo	18XQ/1ZD6	TANG	No
31. 50876232	USA	Top Flite Travel	Amadeus	SEA1S210E	91-1877538	No
32. 50881600	USA	Travel Time of Everett				

* Unless otherwise specified, ARC's/IATA's are valid for Travel Validity outlined above.

****Redistribution/Branch Access (Home Office Location "HOL")** is used in instances where an agency prices and/or views a discount under one Pseudo City Code (PCC) and actually issues the ticket under another PCC (HOL). Typically, when an agency has multiple PCC's for the same ARC/IATA location, they will need "Redistribution" (Apollo/Galileo) or for Sabre "Branch Access" users this is **ONLY** for the "**Home Office Location**" PCC.

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EXHIBIT B

WA STATE STANDARD TERMS and CONDITIONS

This document consists of general provisions and terms for contracts participated in by the Washington State Department of Enterprise Services (DES). Should a term within this document conflict with a term elsewhere in the WSCA-NASPO and/or State of Oregon's terms and conditions the latter will prevail.

1. **AUTHORIZED PURCHASERS**

   The resulting contract is for use by all Washington- State Agencies, Institutions of Higher Education, Political Subdivisions, and Non-Profit Corporations who have signed a Washington Master Contract Use Agreement and who participate in the State of Washington US Bank VISA , or the University of Washington's JP Morgan Chase, Visa card programs. Contractor shall not process state contract orders from unauthorized purchasers.

2. **CONTRACT TERM**

   The initial term of the Contract will be for two years, effective September 1, 2013, with the option to extend for additional term(s) or portions thereof exercised by the mutual agreement of the parties. Notice of any extension must be provided and agreed prior to the end of the initial term. The total Contract term, including the initial term and all extensions, will not exceed six years unless circumstances require a special extension. DES reserves the right to extend with all or some of the Contractors.

3. **PRICE ADJUSTMENTS**

   Firm and Fixed Period

Price Increases

At least sixty calendar days before the end of a one year term of this Contract, Contractor may propose different discounts by written notice to the Purchasing Activity's Contract Administrator.

Documentation must be based on published indices such as Transportation Services Index which is published monthly by the US Department of Labor, Bureau of Labor Statistics. Adjustments in fares will be based on the percentage changes in the CPI-U Transportation Services Index.

Contract Extensions and Price Adjustments

Contractors may not make Contract extensions contingent on price adjustments.

4. Contract modifications

DES reserves the right to modify the resulting contract (including but not limited to adding or deleting products, services, or delivery locations) by mutual agreement between DES and the contractor, so long as such modification is substantially within the scope of the original contract. Such modifications will be memorialized in a signed written document describing the agreed upon change including any terms and conditions required to support such change. Alterations to any of the terms, conditions, or requirements of this contract shall only be effective upon written issuance of a mutually-agreed contract Amendment by DES. However, changes to point of contact information may be updated without the issuance of a mutually agreed contract Amendment.

5. Contract administration

- **State contract administrator**

  DES shall appoint a single point of contact that will be the Contract Administrator for this contract and will provide contract oversight. The contract Administrator will be the principal contact for contractor concerning business activities under this contract. DES will notify contractor, in writing, when there is a new contract Administrator assigned to this contract.

- **Administration of term contract**

DES may maintain contract information and pricing and make it available on DES's web site. The contract prices are the maximum price contractor can charge. The contractor may also offer volume discounts to purchasers.

6. Contractor supervision and coordination

Contractor shall:

a. Competently and efficiently, supervise and coordinate the implementation and completion of all contract requirements specified herein.

b. Identify the contractor's Authorized Representative, who will be the principal point of contact for DES concerning contractor's performance under this contract.

c. Immediately notify the contract Administrator in writing of any change of Designated contractor's Authorized Representative assigned to this contract.

Violation of any provision of this section may be considered a material breach establishing grounds for contract termination.

7. Reserved

8. Term contract management

Upon award of a Term contract, the contractor shall:

a. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.

b. Promote and market the use of this contract to all authorized contract purchasers.

c. Ensure that those who endeavor to utilize this contract are authorized purchasers under this contract.

d. At no additional charge, assist purchasers in making the most cost effective, value based purchases which may include, but is not limited to:

- Having representatives available to provide information regarding products and services, including visiting the purchaser site if needed, and providing purchaser with recommendations.

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9 Reserved

10 Reserved

11 Common vendor-registration and bid-notification system

Contractor shall be registered in the state's common vendor registration and bid notification system, RCW 39.29.006, known as Washington's Electronic Business Solution (WEBS), at www.ga.wa.gov/webs. Contractors already registered need not re-register. It is the sole responsibility of contractor to properly register and maintain an accurate vendor profile.

12 Contractor qualifications and requirements

DES reserves the right to require receipt of proof of compliance with any of the requirements in this section within ten (10) calendar days from the date of request, and to terminate this contract as a material breach for noncompliance with any requirement of this paragraph. Contractor shall maintain compliance with these requirements throughout the life of this contract.

a. Qualified and established business

Prior to performance, or prior to that time if required by DES, law or regulation, contractor must be an established business with all required licenses, fees, bonding, facilities, equipment, and trained personnel necessary to meet all requirements and perform under the agreement.

b. Assignment

Contractor shall not assign or otherwise transfer its obligations or any claim arising under this contract without the prior written consent of DES. Such consent will not be unreasonably withheld. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to assign or otherwise transfer its obligations under this contract. Violation of this provision may be considered a material breach and be grounds for contract termination. Assignment or transfer of contract shall not relieve the contractor from its responsibilities and obligations under the contract arising prior to the date of assignment.

13. Taxes, fees and licenses

a. Taxes

Where required by statute or regulation, the contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the contractor shall be made for federal excise taxes and the purchaser agrees to furnish contractor with an exemption certificate where appropriate.

b. Collection of retail sales and use taxes

In general, contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with contractor's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the contractor either directly or by an agent or other representative:

- Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
- Maintains an in-state inventory or stock of goods for sale;
- Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
- Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or
- Other factors identified in WAC 458-20 .

c. Department of Revenue registration for out-of-state contractors

Out-of-state contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state contractors are not required to

collect and remit "use tax," purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

d. Fees/Licenses

After award of contract, and prior to commencing performance under the contract, the contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this contract.

e. Taxes on Invoice

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices.

14. Quality assurance

a. Right of Inspection

Contractor shall provide right of access to its facilities to DES, or any of DES's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

b. Contractor Commitments, Warranties and Representations

Any written commitment by contractor within the scope of this contract shall be binding upon contractor. Failure of contractor to fulfill such a commitment may constitute breach and shall render contractor liable for damages under the terms of this contract. For purposes of this section, a commitment by contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any express warranty or representation made by contractor in its bid or contained in any contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its bid or used to effect the sale to purchaser.

15. Information and communications

a. Advertising

Contractor shall not publish or use any information concerning this contract in any format or media for advertising or publicity without prior written consent from DES.

b. Retention of records

The contractor shall maintain all books, records, documents, data and other evidence relating to this contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review, or audit by DES, personnel duly authorized by DES, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

c. Proprietary or confidential information

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, DES shall maintain the confidentiality of contractor's information marked confidential or proprietary. If a request is made to view contractor's proprietary information, DES will notify contractor of the request and of the date that the records will be released to the requester unless contractor obtains a court order enjoining that disclosure. If contractor fails to obtain the court order enjoining disclosure, DES will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify contractor of any request(s) for disclosure for so long as DES retains contractor's information in DES records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by contractor of any claim that such materials are exempt from disclosure.

d. Non-endorsement and publicity

Neither DES nor the purchasers are endorsing the contractor's products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to DES, any purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of DES.

e. Protection of confidential and personal information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state or federal statutes ("confidential information"). Confidential information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, etc or information identifiable to an individual that relates to any of these types of information. contractor agrees to hold confidential information in strictest confidence and not to make use of confidential information for any purpose other than the performance of this contract, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or subcontractors who have signed a non-disclosure agreement, the terms of which have been previously approved by purchaser. contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and demand for return of all personal information. The contractor agrees to indemnify and hold harmless the State of Washington and the purchaser for any damages related to both: (1) the contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor shall maintain a log documenting the following: the confidential information received in the performance of this contract; the purpose(s) for which the confidential information was received; who received, maintained and used the confidential information; and the final disposition of the confidential information. Contractor's records shall be subject to inspection, review or audit in accordance with records-retention law.

Purchaser reserves the right to monitor, audit, or investigate the use of confidential information collected, used, or acquired by contractor through this contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by contractor or its subcontractors may result in termination of this contract and demand for return of all confidential information, monetary damages, or penalties.

Immediately upon expiration or termination of this contract, contractor shall, at purchaser's option: (i) certify to purchaser that contractor has destroyed all confidential information; or (ii) return all confidential information to purchaser; or (iii) take whatever other steps purchaser requires of contractor to protect purchaser's confidential information.

16. General Provisions

a. Governing law/Venue

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

b. Severability

Severability: If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract that can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

c. Survivorship

All transactions executed for Services provided pursuant to the authority of this contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein. Further, the terms, conditions and warranties contained in this contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this contract shall so survive.

d. Independent status of contractor

In the performance of this contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

e. Gifts and gratuities

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 39.26 , RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under RCW 39.26 and the Ethics in Public Service Law, Chapter 42.52 RCW, state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

f. Personal liability

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

17. Insurance

The following are general insurance provisions for the State of Washington. Additional requirements specific to a good/service may be detailed elsewhere in a solicitation or its Appendices.

a. General requirements

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract. Upon request, contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

18, 19, 20 and 21 reserved

22. Waiver

Failure or delay of DES or purchaser to insist upon the strict performance of any term or condition of the contract or to exercise any right or remedy provided in the contract or by law; or DES's or purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of DES or purchaser to insist upon the strict performance of the entire agreement by the contractor. In the event of any claim for breach of contract against the contractor, no provision of this contract shall be construed, expressly or by implication, as a waiver by DES or purchaser of any existing or future right and/or remedy available by law.

23. Disputes and remedies

a. Problem resolution and disputes

Problems arising out of the performance of this contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

b. Administrative suspension

When it in the best interest of the state, DES may at any time, and without cause, suspend the contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from DES to the contractor's Representative. contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the contractor can be demanded and required to resume performance within the 30 day suspension period by DES providing the contractor's Representative with written notice of such demand.

c. Force majeure

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of war, riots, strikes, fire, floods, windstorms, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this contract if, and to the extent that, such party's performance of this contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

Rights reserved: DES reserves the right to authorize an amendment to this contract, terminate the contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and contractor shall have no recourse against the State.

d. Alternative dispute resolution fees and costs

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition,

each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

e. **Non-exclusive remedies**

The remedies provided for in this contract shall not be exclusive but are in addition to all other remedies available under law.

24. Liquidated damages

a. **Limitation of liability**

The parties agree that neither contractor, DES nor purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

The contractor, DES and purchaser are not liable for damages arising from causes beyond their reasonable control and without their fault or negligence. Such causes may include, but are not restricted to, acts of the public enemy, acts of a governmental body other than DES or the purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the contractor, DES or the purchaser, or their respective subcontractors.

If delays are caused by a subcontractor without its fault or negligence, contractor shall not be liable for damages for such delays, unless the services to be performed were obtainable on comparable terms from other sources in sufficient time to permit contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

b. **Federal funding** (if applicable)

In the event that a federally funded acquisition results from this procurement, the contractor may be required to provide additional information (free of charge) at the request of DES or purchaser. Further, the contractor may be subject to those federal requirements specific to the commodity.

c. **Federal restrictions on lobbying** (if applicable)

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

d. **Federal debarment and suspension** (if applicable)

The contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

25. Contract termination

a. **Material breach**

A contractor may be terminated for cause by DES, at the sole discretion of DES, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the contract may include but is not limited to:

- Contractor failure to comply with any mandatory provision of the contract;
- Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the contractor's proper performance hereunder;
- Appointment of any receiver, trustee, or similar official for contractor or any of the contractor's property and such appointment endangers the contractor's proper performance hereunder;

- A determination that the contractor is in violation of federal, state, or local laws or regulations and that such determination renders the contractor unable to perform any aspect of the contract.

b. Termination for convenience

Except as otherwise provided in this contract, DES, at the sole discretion of DES, may terminate this contract, in whole or in part by giving 30 calendar days or other appropriate time period written notice beginning on the second day after mailing to the contractor. If this contract is so terminated, purchasers shall be liable only for payment required under this contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the purchaser prior to the effective date of contract termination. Neither DES nor the purchaser shall have any other obligation whatsoever to the contractor for such termination. This Termination for Convenience clause may be invoked by DES when it is in the best interest of the State of Washington.

c. Termination for withdrawal of authority

In the event that DES and/or purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this contract and prior to normal completion, DES may terminate this contract, in whole or in part, by seven calendar days written notice, or other appropriate time period, to contractor.

d. Termination for non-allocation of funds

If funds are not allocated to purchaser(s) to continue this contract in any future period, DES may terminate this contract with seven calendar days written notice, or other appropriate time period, to contractor, or work with contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies, services and/or equipment including the net remainder of agreed-to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DES and/or purchaser agree to notify contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

e. Termination for conflict of interest

DES may terminate this contract by written notice to contractor if it is determined, after due notice and examination, that any party to this contract has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this contract is so terminated, DES and/or purchaser shall be entitled to pursue the same remedies against contractor as it could pursue in the event that the contractor breaches this contract.

f. Termination by mutual agreement

DES and the contractor may terminate this contract in whole or in part, at any time, by mutual agreement.

g. Termination procedure

In addition to the procedures set forth below, if DES terminates this contract, contractor shall follow any procedures DES specifies in the termination notice.

Upon termination of this contract and in addition to any other rights provided in this contract, DES may require the contractor to deliver to the purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.