

- 6.2.2 The DigitalEdge web site shall be able to link directly to the Bidder's web site, and the Bidder's web site shall link back to the ESD 112 DigitalEdge web site.
- 6.2.3 Awarded Bidders have the option to use a method to screen users of their DigitalEdge web site. Bidders that use such a method shall provide the DigitalEdge office with a login and password, or other instructions for gaining access to their DigitalEdge web site.
- 6.2.4 Failure to provide information required on the template may result in the *suspension* of the processing of orders until the conditions of the DigitalEdge Contract are met. Continued errors or omissions in maintaining accurate and up-to-date information on the Awarded Bidder's DigitalEdge-specific web site may result in *termination* of the DigitalEdge Contract.
- 6.2.5 The awarded vendors website shall remain operational and in compliance with the website guidelines outlined in this paragraph during the contract period.
- 6.3 **E-Mail Blasts.**
Awarded Bidders shall work with the Project Coordinator of DigitalEdge regarding product and pricing information, as well as product photos, when requesting assistance with an e-mail blast. The *Cutting Edge* email blast newsletter is sent out monthly. It is recommended that the Awarded Bidder submit data for e-mail blasts at least every other month.
- 6.3.1 The Project Coordinator of DigitalEdge shall provide Awarded Bidders with a form that requests the data for an e-mail blast. Forms shall be available on the Vendor's area of the DigitalEdge web site after awards are made. Sample e-mail blasts include:
- 6.3.1.a Announcements of new products on the Contract
 - 6.3.1.b Products or bundles on promotion (PowerDeals)
 - 6.3.1.c Discounts on discontinued items
- 6.3.2 The DigitalEdge requires up to five business days for approval. Often, it is approved within 48 hours.
- 6.3.3 When sending out an approved e-mail blast to Eligible Purchasers with a message related to the DigitalEdge or an awarded product ~~or service~~, the Awarded Bidder shall send a carbon copy of the e-mail to the Project Coordinator of DigitalEdge at **digitaledge.specialist@esd112.org**. The Project Coordinator of DigitalEdge shall assist with disseminating the e-mail to various e-mail lists in the pertinent states.
(Amendment 10/2015)
- 6.4 **Marketing Brochures, Flyers and Catalogs.**
All marketing materials (print-based and electronic) that advertise awarded products ~~and services~~ on the DigitalEdge Contract shall be subject to review by the DigitalEdge office, and shall require approval based on the DigitalEdge Marketing Criteria and Approval Form that is downloadable from the vendor area on DigitalEdge web site. Marketing materials are encouraged to be used for promoting the DigitalEdge contracts.
- 6.5 **Demonstrations at Technology Forums.**
Awarded Bidders may receive individual invitations to conduct additional demonstrations of

awarded products at ESD (or other) technology forums. Participation in these technology forums is optional, but encouraged.

7.0 DigitalEdge Price Documents.

Bidders shall keep the DigitalEdge office up-to-date on the status, availability and pricing on awarded solutions, discontinued solutions, replacement solutions, and newly added solutions, and all of the Contract pricing, at all times. Awarded Bidders shall provide the DigitalEdge office with the required documentation described in this section within 15 days of the change. Bidders that are not in compliance with this requirement shall be subject to actions described in the Contract Administration section.

7.1 No Reminders.

Awarded Bidders shall not rely on reminders from the DigitalEdge office.

7.2 Product Life Span.

When an awarded solution reaches its end-of-life while on the Contract, the Bidder shall replace it with an equal or better solution, if available.

7.2.1 When replacement solutions are added to the Contract, the Awarded Bidder shall verify the new contract price(s) by submitting a current manufacturer pricelist of the same type that was used for baseline pricing in the original bid, along with other required documentation.

7.2.2 If no replacement solution is available, the Awarded Bidder shall make a note of that in the Comments section of the Contract Price Verification Form.

7.2.3 All revisions shall be subject to approval by the DigitalEdge office.

7.3 New Solutions.

Awarded Bidders may add new solutions for the manufacturers which they received an award.

7.3.1 If applicable to the awarded Contract, the Awarded Bidder may add new solutions to the Contract when made available by the manufacturer, provided that the Contract prices are more competitive than regular education channels.

7.3.2 Awarded Bidders shall use the comments section of the Contract Price Verification Form to highlight new solutions and their Contract prices.

7.3.3 Awarded Bidders shall submit a current manufacturer's pricelist or the Bidder's cost sheet for all pertinent manufacturers when new solutions are added to the Contract.

7.3.4 Awarded Bidder's shall use the same type of manufacturer's pricelist or bidder's cost sheet used in the bid submittal throughout the life of the Contract when adding new solutions.

7.3.5 Awarded Bidder's shall use the same method of price adjustment as in the original Bid (discount or markup)

7.3.6 Newly added solutions and their Contract prices are subject to review and approval by the DigitalEdge office, and may require a discussion with the Awarded Bidder before adding them to the Contract.

7.4 Changes in Award Price.

Contract prices shall be kept current with the DigitalEdge office and shall reflect the current market conditions. All proposed changes in Contract prices are subject to approval by the DigitalEdge office.

7.4.1 Contract prices of awarded products shall decrease when there is a decrease in the manufacturer's pricelist or education prices.

7.4.2 Awarded Bidder's shall use the same type of manufacturer's pricelist or bidder's cost sheet used in the bid submittal throughout the life of the Contract when price revisions occur.

7.4.3 "Harm" is defined as "circumstances that prevent an Awarded Bidder from generating an adequate margin in order to carry out the business of making a sale." Contract prices may only increase when the manufacturer's pricelist or bidder's cost sheet increases for the products. When the market conditions result in harm to the Awarded Bidder, the percent of discount or markup over cost used in the bid submittal shall be applied to the increased manufacturer's price or cost sheet resulting in a new contract price.

7.4.3.a To request relief from harm, the Awarded Bidder shall submit a letter of request to revise the price of the awarded solution, with a clear and concise explanation of why relief from harm is requested. The Awarded Bidder shall also include the manufacturer's published pricelist or the Bidder's cost sheet when the letter is submitted as justification for the request.

~~7.4.3.b An Awarded Bidder may request relief from harm no more than twice per calendar year. (Amendment 10/2015)~~

~~7.5 **Random Audits by the DigitalEdge Office.**~~

~~The DigitalEdge office shall reserve the right to conduct random audits of a Bidder's integrity and performance level as an Awarded DigitalEdge Vendor. This includes but is not limited to prevailing wage standards, price verification, licensing, certification and more. (Amendment 10/2015)~~

7.5 Random Price Audits by the DigitalEdge Office.

The DigitalEdge office shall conduct random price audits of Bidders' pricing on a monthly basis to ensure that the Eligible Purchasers are benefiting from the Contract. Price audits may include a review of reported sales, a request for documentation from the Awarded Bidder, or other methods. Awarded Bidders shall provide all requested documentation to the DigitalEdge office within three business days of the request.

7.6 Random New Product Audits by the DigitalEdge Office.

The DigitalEdge office shall conduct random new product audits of Bidders' awarded solutions to ensure that the Eligible Purchasers are benefitting from having current and updated solutions on the Contract. When solutions are available but not added to the contract in a timely basis, DigitalEdge may submit a request for the new products to be added from the Awarded Bidder. Awarded Bidders shall provide all requested documentation to the DigitalEdge office within five business days of the request.

8.0 DigitalEdge Monthly Sales Report.

Awarded Bidders shall track purchases of solutions awarded on the DigitalEdge Contract that are made by Eligible Purchasers and that quote the awarded Contract number on the purchasing document (purchase order or visa requisition). The Awarded Bidder shall use the Monthly Sales Report Form which can be downloaded from the Vendor's menu page on the DigitalEdge web site.

8.1 Contract Sales.

Awarded Bidders shall provide the Project Coordinator of DigitalEdge with a monthly sales report for **all activity generated under or as a consequence of the awarded DigitalEdge Contract(s). The sales reports shall include parts, labor, and associated costs and was products listed on the final quote to the purchaser.** The monthly sales report shall include the reporting for parts, labor and associated costs products sold listed separately for the purpose of accurate reporting of administration fee. **(Amendment 10/2015)**

8.2 No Contract Activity.

Awarded Bidders that have no contract activity (AKA provision of Safety Solutions to purchasers) during a month shall still submit a sales report for that month.

8.2.1 When an Awarded Bidder has had no contract activity in one or more states for four consecutive months, the Project Coordinator of DigitalEdge shall call a meeting of the Awarded Bidder and the Program Director, and a decision shall be made as to whether to continue the Awarded Bidder's Contracts in those states, terminate the Contract in those states, or award Contract to the next lowest Bidders of those manufacturer's product lines in those states. Once a Contract is terminated in a state, it shall not be re-instated.

8.3 Single Reporting Source.

The Awarded Bidder shall submit the DigitalEdge Monthly Sales Report on behalf of all agents of the Awarded Bidder, from a single reporting source.

8.4 Schedule.

The Awarded Bidder shall send the report to the Project Coordinator of DigitalEdge by the 15th day of the following month of sales for which the Purchasers have been invoiced.

8.4.1 Awarded Bidders shall not rely on reminders from the DigitalEdge office.

8.4.2 The Awarded Bidder shall send the DigitalEdge Monthly Sales Report electronically, via e-mail to the Project Coordinator of DigitalEdge, in an unprotected and unaltered Excel spreadsheet.

8.5 Confirmation of Data.

Upon receipt of the DigitalEdge Monthly Sales Report, the DigitalEdge office shall review and analyze the report, record the data, and confirm the amount due to ESD 112 for administrative fees. The party that reports the sales shall be the party that remits payment of the administrative fees.

9.0 Payment of Administrative Fees.

The level of administration fees to be paid to ESD 112 to support the DigitalEdge operation is identified in the section of the Invitation to Bid entitled **Instructions for Bidding**. Awarded Bidders shall pay ESD 112 the administration fee on sales of awarded ~~parts, labor and associated costs~~ products that are a direct result or

consequence of the awarded DigitalEdge Contract. ~~unless a reduction of administrative fees has been pre-approved by the DigitalEdge office.~~ **(Amendment 10/2015)**

9.1 Remittance.

The Awarded Bidder shall remit a check to ESD 112 for the administrative fees within fifteen calendar days after confirmation from the Project Coordinator of DigitalEdge.

9.2 References.

Bidders shall reference the following information on their remitted checks:

9.2.1 The DigitalEdge Contract and awarded Contract number.

9.2.2 The month and year of contract activity for which the check is for.

9.3 Sample Schedule.

A sample schedule of the due dates for the DigitalEdge Monthly Sales Reports and the remittance of the administrative fees follows:

For sales completed during the month of:	The monthly sales report is due to the Project Coordinator of DigitalEdge no later than:	The Project Coordinator of DigitalEdge confirms the administrative fees no later than:	Administrative fees are due to ESD 112 no later than:
February	March 15	Last day in March	April 15

10.0 Requests for Documents.

10.1 Requests for Information.

Awarded Bidders shall cooperate with Educational Service District 112 and the DigitalEdge office when reasonable requests are made for information and documentation or correspondence relating to the DigitalEdge Contract.

10.2 Record Archival.

Awarded Bidder shall maintain all records throughout the term of the Contract that document the way that Contract prices are charged to Purchasers in accordance with the bid price structure.

10.2.1 Awarded Bidders shall archive copies of the manufacturer’s pricelist sheet that was used as a basis for offering bids, and shall provide those documents to the DigitalEdge office upon request within three business days of the request.

10.2.2 Awarded Bidders shall maintain records, books and documents that are pertinent to price data for at least three years from the date of final transaction.

CONTRACT ADMINISTRATION

1.0 **Contract Administration.**

It shall be the responsibility of the Project Coordinator of DigitalEdge at Educational Service District 112 to monitor the performance of all awarded Contracts.

2.0 **Representations.**

Bidder represents that all the statements and information that were submitted in accordance with the bid requirements are accurate and true and create contractual obligations. Any misrepresentation or action that is inconsistent with bid requirements constitutes a violation of the Terms and Conditions of the DigitalEdge Contract that may result in a penalty, including termination.

3.0 **Monitoring of the Contract's Execution.**

The Project Coordinator of DigitalEdge shall monitor all aspects of the execution of DigitalEdge Contract activity in an ongoing manner, including but not limited to the following:

- 3.1 Awarded Bidder's performance in and adherence to the Contract's Terms and Conditions.
- 3.2 Marketing requirements and compliances listed in the Contract.
- 3.3 Awarded Bidder's provision of the current monthly price sheet updates and any related documents.
- 3.4 Awarded Bidder's provision of the list of the bid prices of all awarded products on the DigitalEdge Contract.
- 3.5 The regular and timely submission of the DigitalEdge Monthly Sales Reports and the regular and timely payment of Administrative Fees by the Awarded Bidder or their agent.
- 3.6 Providing the DigitalEdge Office with required paperwork and documentation.
- 3.7 Satisfaction surveys and comments from the Eligible Purchasers.

4.0 **Dispute.**

A dispute that arises after the Contracts have been awarded shall be handled in accordance to the following:

4.1 **Criteria for Dispute.**

To seek review of a dispute between the DigitalEdge office and the Awarded Bidder, the dispute shall meet the following criteria:

- 4.1.1 An attempt to resolve the dispute shall have been made by the DigitalEdge Program Director and the Awarded Bidder, but the dispute could not be resolved to the satisfaction of both parties;
- 4.1.2 The Awarded Bidder disagrees with a decision made by the DigitalEdge Program Director, such as, but not limited to the following:

- 4.1.2.a The manner in which a product, product bundle or product category is promoted in marketing materials;
- 4.1.2.b Documentation of the level of sales generated through the DigitalEdge Contract;
- 4.1.2.c A decision to impose a remedy;
- 4.1.2.d Other decisions made by the DigitalEdge Program Director that are informal in nature but the Awarded Bidder believes to be unfair or partial.

4.2 Dispute Procedure.

The procedure for reviewing a dispute shall take place in accordance with the following:

- 4.2.1 The Awarded Bidder shall submit a letter of dispute in writing (on company letterhead, via e-mail) to the Project Coordinator of DigitalEdge, requesting a review of the dispute by a Review Team at ESD 112. The letter shall include the following:
 - 4.2.1.a Information about the Awarded Bidder such as name of firm, mailing address, phone number and name of individual responsible for requesting a review.
 - 4.2.1.b The facts and arguments that are relied on as the basis for the review.
 - 4.2.1.c Any relevant exhibits or evidence supporting the position taken by the Awarded Bidder in regard to the dispute.
 - 4.2.1.d Description of the requested resolution to the dispute.
- 4.2.2 The Project Coordinator of DigitalEdge shall confirm receipt of the letter within three business days.
- 4.2.3 The DigitalEdge Program Director shall schedule a meeting of all parties with a Review Team of at least three ESD 112 Cabinet members as soon as possible.
- 4.2.4 The Review Team shall hear the facts and review the materials that are pertinent to the dispute, and shall seek answers to questions from the DigitalEdge Program Director, the Project Coordinator of DigitalEdge, and the Awarded Bidder.
- 4.2.5 The Review Team shall render a decision within three business days of the review, and the Chief Fiscal Officer or other member of the Review Team shall submit a written decision to the Awarded Bidder within five business days of the review. The decision of the Review Team shall be final and binding.

5.0 Remedies for Violations and Matters of Non-Performance.

In the event that Awarded Bidders cannot or will not carry out the responsibilities and requirements in the Scope of Work, Post-Award Requirements and Terms and Conditions in the Contract, the DigitalEdge Program Director shall take the following steps to impose a remedy:

5.1 **Material Violations.**

Any violation by an Awarded Bidder that causes financial harm to either DigitalEdge or any Purchaser under the Contract shall be determined to be a **material violation**.

5.1.1 **Material Terms.**

For purposes of this provision, the ***following are material terms*** of the DigitalEdge Contract:

- 5.1.1.a Misrepresenting product availability at the time of bid submission.
- 5.1.1.b Refusal to sell, or selling products to Eligible Purchasers at or below the DigitalEdge Contract price;
- 5.1.1.c Selling equipment or products that are not new and/or products that are not free of liens, or that are B stock, as defined in Paragraph 8 of the Terms and Conditions;
- 5.1.1.d Refusal to comply with the Shipping, Delivery and Freight Terms as defined in Paragraph 4.0 of the Post-Award Requirements;
- 5.1.1.e Including sales tax in the bid price, as defined in Paragraph 2.10 in the Instructions for Bidding;
- 5.1.1.f Refusal, or continued tardiness in providing the Project Coordinator of DigitalEdge with updated product and price revisions on the Contract Price Verification Form within 15 days of manufacturer's product and price changes, as defined in Paragraphs 7.0 through 7.4 of the Post-Award Requirements;
- 5.1.1.g Refusal to provide the DigitalEdge office with requested documentation during a DigitalEdge audit, as described in Paragraphs 7.5 and 7.6 of the Post-Award Requirements.
- 5.1.1.h Refusal, or continued tardiness the monthly DigitalEdge Sales Report on a monthly basis, as defined in Paragraph 8.0 of the Post-Award Requirements;
- 5.1.1.i Refusal, or continued tardiness in paying the Administrative Fee on purchases, as defined in Paragraph 9.0 of the Post-Award Requirements;
- 5.1.1.j Refusal to comply with all insurance requirements as defined in Appendix E of the Invitation to Bid, and Paragraph 1.1 in the Post-Award Requirements;
- 5.1.1.k Violation of any of the Bidder integrity provisions stated in Paragraph 12 in the Terms and Conditions;
- 5.1.1.l The Awarded Bidder is under suspension or debarment, or are lawfully denied from participation in public procurement activities with Eligible Purchasers during the term(s) of the Contract.
- ~~5.1.1.m Refusal to comply with local prevailing wage standards, as required in Appendix B of the Invitation to Bid. (Amendment 10/2015)~~

5.1.2 **Remedy for Material Violations.**

In addition to any other rights set out elsewhere in the DigitalEdge ITB documents, requirements, terms and conditions, the DigitalEdge reserves the right to impose any combination of the following:

5.1.2.a Terminate the DigitalEdge Contract and end the Awarded Bidder's participation in the DigitalEdge Program.

5.1.2.b Suspend the Awarded Bidder from participation until an acceptable plan for improvement has been received at the DigitalEdge office.

5.2 **Non-Material Violations.**

Violations that are **non-material** are matters of non-compliance with the DigitalEdge Contract, but do not necessarily cause financial harm to the DigitalEdge or to Eligible Purchasers.

5.2.1 **Non-Material Terms.**

For the purpose of this provision, violations that are **non-material** include but are not limited to:

5.2.1.a Failure to perform the customer service requirements as defined in Paragraphs 2.0 and 3.0 in the Post-Award Requirements;

5.2.1.b Failure to perform the marketing requirements as defined in Paragraph 6.0 in the Post-Award Requirements;

5.2.1.c Missing the due dates for submitting the monthly DigitalEdge Sales Report to the Project Coordinator of DigitalEdge, as defined in Paragraph 8.0 of the Post-Award Requirements; or the monthly remittance of Administrative Fees to ESD 112, as defined in Paragraph 9.0 in the Post-Award Requirements;

5.2.1.d Failure to submit the Contract Price Verification Form within 15 days of a product or price change of an awarded product.

5.2.1.e Any other violation that is not in compliance with the DigitalEdge Contract, but does not create significant financial harm to ESD 112 or the Purchasers.

5.2.2 **Remedy for Non-Material Violations.**

The Awarded Bidder that fails to remedy any violation that is a non-material term of the DigitalEdge Contract after having been given thirty calendar days written notice that the violation occurred shall be subject to a remedy. The DigitalEdge reserves the right to apply any of the following remedies alone or in combination for non-material violations of the DigitalEdge Contract:

5.2.2.a Require the Awarded Bidder to write, submit and execute an improvement plan that meets the approval of the DigitalEdge Program Director.

5.2.2.b Suspend the Awarded Bidder's rights under the DigitalEdge Contract until the Bidder cures any violations and pays any penalties that have been imposed.

- 5.2.2.c Impose a financial remedy in an amount of up to \$1,000 per violation.
- 5.2.2.d Require the non-performing Bidder to post a performance bond on all future bids.
- 5.2.2.e Terminate the DigitalEdge Contract, discontinue the Awarded Bidder's participation in the DigitalEdge Program, and re-award the Contract to the next lowest responsive, responsible Bidder for those states.

6.0 Debarment.

If an Awarded Bidder's Contract is terminated, the Awarded Bidder shall be debarred and suspended from participating in future ESD 112 bid awards for a period of at least three years. Disputes regarding the decision to terminate an Awarded Bidder's Contract are subject to the dispute resolution process described in this document.

7.0 Public Record.

All bids, documents and communications received at ESD 112 in response to or in connection with Contract are the property of ESD 112 and shall be subject to public disclosure (RCW 42.56.070). Bidders and/or other interested parties who wish to request copies of official records, data or information may contact the Project Coordinator of DigitalEdge for further information.

CONTRACT TERMS AND CONDITIONS

Terms and Conditions.

The submission of a bid is an offer to enter into a Contract that, upon acceptance by ESD 112, obligates the Bidder (and their authorized agents) to comply with the Terms and Conditions set forth below, and all the requirements in the bid documents. If there is an inconsistency with a requirement or special condition in the Bid documents, the Terms and Conditions shall govern.

Upon acceptance of an award, the Bidder agrees to the following:

- 1. Conformance.**
Each bid shall conform to the special conditions, instructions to the Bidders, scope of work, post-award requirements and all bid forms, all of which shall become part of the Contract documents.
- 2. Compliance.**
By submitting a bid, the Bidder agrees to comply with DigitalEdge Contract terms, including offering the awarded products for the DigitalEdge Contract price when selling awarded products to the Eligible Purchasers named in the states identified in their bid, until the expiration of the Contract. The Contract term is the date stated in the Final Letter of Award, unless the Contract is extended or a replacement Contract is awarded.
- 3. Role.**
ESD 112 shall in no way whatsoever incur any liability in relation to the specifications, delivery, payment or any other aspect of purchases by Purchasers.
- 4. Cost of Bid Preparation.**
The DigitalEdge shall not pay or reimburse Bidders for the development, presentation or provision of any bid or portion of the bid in response to the Invitation to Bid.
- 5. Bid Withdrawal.**
No Bidder may withdraw his/her bid after the hour set for the opening thereof, or thereafter, before award of the DigitalEdge Contract, unless award is delayed for a period exceeding sixty days from the bid opening date. If the award of the DigitalEdge Contract is delayed for more than sixty days due to a protest, the DigitalEdge Program Director may invite all Bidders to agree to extend their bid until the protest is resolved, or may reject all bids.
- 6. Security.**
Educational Service District 112 shall not require Bidders to furnish a bid bond at the time of opening or a performance bond after award. However, ESD 112 requires a high level of integrity with Bidders and may require any Awarded Bidder to supply a performance bond if problems arise regarding requisitions, delivery of products or ~~services~~, or compliance with Contract requirements.
- 7. Contract Execution.**
The Contract is considered fully executed at the time that the ESD 112 Superintendent signs and delivers the Offer and Acceptance Form to the Bidder.

8. Products and Equipment.

8.1 Products shall be new, with new serial numbers and made with components that meet manufacturer specifications.

8.2 No "B" stock or refurbished products may be bid or sold to Purchasers.

8.3 All products and equipment shall be free of liens.

9. Non-Appropriation.

A Purchaser's obligation to make payments during any fiscal year succeeding the current fiscal year shall be subject to the availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Purchaser shall have the right to terminate the Contract. The Awarded Bidder may seek reimbursement for the reasonable costs incurred prior to termination.

10. Force Majeure.

The Awarded Bidder shall not incur any liability to the DigitalEdge or Purchasers if its performance of any obligation pursuant to the DigitalEdge Contract or a purchase order is prevented or delayed by causes beyond its control and without the fault or negligence of any other party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

11. Acknowledgement of Contract Numbers by Bidders and Their Agents.

The Awarded Bidder shall assign the Awarded Contract number to be referenced on purchase orders submitted by Purchasers for DigitalEdge products.

12. Awarded Bidder Integrity Provisions.

The Awarded Bidder shall abide by the highest standards of ethics and integrity in the performance of the DigitalEdge Contract, and shall comply with all applicable state and federal laws, regulations and other requirements that govern the Contract with ESD 112.

The Awarded Bidder shall not, in connection with the DigitalEdge Contract or any other agreement with ESD 112 or a Purchaser, directly or indirectly offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty by any DigitalEdge program officer or employee or Eligible Purchaser.

The Awarded Bidder, upon execution of a Purchase Order and by the submission of any bills or invoices for payment pursuant thereto certifies and represents that the Bidder has not violated any of these provisions.

Upon receiving a request from ESD 112 or a Purchaser, an Awarded Bidder shall provide, or if appropriate, make immediately available for inspection or copying, any information or documentation of any type or form, including but not limited to, the Awarded Bidder's business or financial records, documents or files of any type or form which refers to or concerns the DigitalEdge Contract or a purchase order. Awarded Bidders shall retain such information and documentation for a period of three years beyond the termination of the purchase order unless otherwise provided by law.

13. **Rejections.**

All goods or materials supplied under the Contract are subject to approval by the Purchaser. Any rejection of equipment or goods because of nonconformity to the terms, conditions, and specification of this offer, whether held by Purchaser or returned, shall be at the Awarded Bidder's sole risk and expense.

14. **Release.**

If an award is cancelled as a result of a protest, the Awardee shall not claim against ESD 112, any alleged (a) bid preparation charges, (b) cost incurred to ensure that the Awardees' bid is responsive, (c) claims for anticipated lost profits, or (d) claims for damages, and (e) attorney's fees. Any claims the Awardee may have are hereby waived. Awardee hereby releases ESD 112, its officials, officers, employees and agents from any and all liability that may arise as a result of decisions that are made to award, reject, terminate or implement DigitalEdge Contracts. The release provision does not include claims that are based on a decision to terminate the Contract except where the Contract is terminated as a result of a bid protest or court order. The release provision does not include claims that are based on the implementation of the Contract except to the extent those decisions regarding the implementation are being made in response to a bid protest or court order.

15. **Release of Personal Liability.**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of ESD 112 be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

16. **Headings.**

Paragraph headings have been included for the convenience of the parties and shall not be considered a part of the DigitalEdge Contract for any purpose relating to construction or interpretation of the terms of the Contract.

17. **Assignment.**

Neither this Agreement nor any interest therein may be assigned by either party without the prior written consent of the other party.

18. **Indemnification.**

In addition to any liability or obligation of the Awarded Bidder to ESD 112 that may exist under any other provision of the DigitalEdge Contract or by law or otherwise, the Awarded Bidder shall defend, indemnify and hold harmless ESD 112 and its officials, officers, employees and agents from and against claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including legal fees, that may arise from the negligent performance of this Agreement by the Awarded Bidder, its officials, officers, agents, employees or subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts on behalf of the Awarded Bidder.

19. **Termination.**

The DigitalEdge Contract may be terminated as follows: (1) by mutual written agreement of the parties; or (2) as described under Remedies for Violations in the Contract Administration section.

20. **Waiver.**

No provision of the DigitalEdge Contract or the right to receive reasonable performance of any act called for by its terms shall be deemed waived by a waiver of a breach thereof as to a particular transaction or occurrence.

21. **Severability.**

If any term of condition of the DigitalEdge Contract or application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid, void or unenforceable, such finding shall not affect the other terms, conditions, or applications of the DigitalEdge Contract which can be given effect without the invalid, void or unenforceable term, condition, or application and, to this end, the terms and conditions of the DigitalEdge Contract are declared severable.

22. **Governing Law and Venue.**

The DigitalEdge Contract shall be governed by the laws of the state of Washington and any action or litigation undertaken by ESD 112 or the Awarded Bidder to enforce the terms of the DigitalEdge Contract shall be conducted in Clark County, Washington.

23. **Compliance with Law.**

Notwithstanding any provision in the DigitalEdge Contract to the contrary, the terms of the DigitalEdge Contract are subject to and shall be consistent with all applicable state and federal laws. To the extent a provision in the DigitalEdge Contract is ambiguous or inconsistent with applicable state and federal laws; this provision shall be interpreted and applied in a manner that complies with all applicable laws.

24. **Whole Agreement.**

The parties agree that the Terms and Conditions in the DigitalEdge Invitation to Bid and any bid requirements, forms or appendices referred to therein constitutes the entire agreement between the parties with regards to ESD 112's and the Awarded Bidder's obligations regarding the DigitalEdge purchasing program. Upon acceptance of a bid and the Contract award, the DigitalEdge Contract shall supersede all prior or existing written or oral agreements between the parties on this subject. Amendments or corrections to the DigitalEdge Contract shall be in writing and signed by both parties.

25. **Opportunity without Discrimination.**

ESD 112 and the Awarded Bidder agree to comply with all applicable state and federal rules and regulations which prohibit discrimination on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, families with children, honorably discharged veteran or military status, use of a trained guide or service dog, or the presence of any sensory, mental or physical disability. Inquiries regarding compliance and/or grievance procedures for the ESD may be directed to the ESD at its address above.

26. **Employment Representation.**

During the term of the DigitalEdge Contract, to the extent that employee(s) of the Awarded Bidder may have contact with public school children, the Awarded Bidder is prohibited from employing any person who has pled guilty or been convicted of any felony crime involving the physical neglect, injury, death or sexual abuse or exploitation of a minor. Failure of the Awarded Bidder to comply with this section shall be grounds for immediate termination of the Contract.

27. **Exclusion, Debarment and Suspension Certification.**

Awarded Bidder certifies that they, nor their Principals, are on the Excluded Parties List Report (web address: <http://epls.arnet.gov/News.html>) and that they are not presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded for the award of contracts by any Federal governmental agency or department. ("Principals", for purposes of this certification, mean officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity, e.g., general manager; plant manager, head of subsidiary, division, or business segment; and similar positions.) The Awarded Bidder or his/hers reseller (agent) shall provide an immediate written



notice to ESD 112 if, at any time during the term of this Agreement, including any renewals hereof, it learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which ESD 112 has relied in entering into a Contract. Should ESD 112 determine, at any time during the Contract, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the ESD 112 may immediately terminate the Contract.