



PURCHASING POWER FOR
21ST CENTURY SCHOOLS

DigitalEdge



Educational Service District 112 • 2500 NE 65th Ave. • Vancouver, WA 98661 • Phone 360.952.3415 • Fax 360.696.3099 • M-F • 8:00am-5:00pm PST

PART 2 OF 2

CONTRACT #ESD112-DE-15A
Chromebooks and Related Solutions

WITH ADDENDA AND AMENDMENT (NOVEMBER 2015)
WITH AMENDMENT (MAY 2017)

CONTRACT No. ESD112-DE-15A



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Post-Award Materials

*These materials shall be available for download on the **Vendor Contract Resources** web page after awards are made:*

- Template for Ordering Instructions / Return Policy / Web Site Requirements Online
- Form for Marketing Print Materials..... Online
- Form for Marketing Promotions through Power Deals and E-Mail Blasts..... Online
- Bidder Request for Reduction of Administrative Fees..... Online
- Contract Price Verification Form..... Online
- DigitalEdge Monthly Sales Report..... Online

AUTHORIZATION AND BACKGROUND

Intent and Purpose.

The DigitalEdge at Educational Service District 112 (ESD 112) makes purchasing contracts available to Eligible Purchasers in the states named in the Invitation to Bid. The intent of the DigitalEdge Contract is to provide a convenience contract from which Eligible Purchasers can purchase products at competitively bid prices.

ESD 112 is acting as the agent on behalf of the Eligible Purchasers and Purchasing Organizations. The purpose of inviting bids is to support the Eligible Purchasers in several ways as they seek best pricing for the requested solutions:

- To make it easy for Eligible Purchasers to identify quality solutions for their classrooms and organizations;
- To save Eligible Purchasers the time, expense and energy of publishing their own competitive bids;
- To provide increased equity in pricing between large and small districts, while still providing even more competitive prices for large purchases;
- To assist districts in meeting their state's purchasing requirements for their organizations;
- To share the cost of administering the Contract.

Authorization.

Educational Service Districts in the state of Washington are political subdivisions of the state that are organized under and operate in accordance with state statutes. Chapter 28A.310 of the Revised Code of Washington (RCW) is the primary statute that governs ESD's. Chapter 28A.310 authorizes ESD's to enter into contracts, to provide informational services and to establish cooperative programs. RCW 28A.310.200. Section 28A.310.180 (3) directs ESD's to establish "joint purchasing programs." DigitalEdge is a joint purchasing program of ESD 112 that has been established in accordance with, and is operating pursuant to, ESD 112's governing law.

Background.

The DigitalEdge at ESD 112 is responding to a request by districts to publish competitive bids for classroom technology solutions. The intent of the Invitation to Bid is to produce contracts that provide the requested solutions to K-20 schools and ~~public agencies~~ other educational organizations at highly competitive prices and in a manner that meets state purchasing laws for their organizations. ESD 112 is acting as the bidding agent on behalf of all of the Eligible Purchasers. (Amendment 5/2017)

21st Century Schools.

A list of ways in which these devices support 21st Century classrooms includes, but is not limited to:

- Utilizing new teaching and assessment methods by teachers
- Creating personalized learning environments for students
- Supporting the Common Core State Standards
- Incorporating research-based instructional strategies
- Testing students, such as through the Smarter Balanced Assessment Consortium
- Supporting the new teacher and principal evaluation system (walk-throughs, data-collection, video-capture)
- Teletherapy and learning adaptation for special needs students
- Flipping classrooms, blended learning environments and online courses
- Virtual meetings and presentations

Eligible Bidders.

For consideration, Bidders shall be manufacturers or authorized resellers that can provide **products and services requested in the Scope of Work of the Invitation to Bid** in the states included in their offer, and that are able to carry out the scope of work, post-award requirements and the terms and conditions of the Contract in the state(s) in which they are authorized and willing to sell DigitalEdge solution to the Eligible Purchasers. **Please Note:** All Awarded Bidders on current DigitalEdge Contracts shall be current and in good standing with the DigitalEdge office in order to be eligible to receive an award as a result of the Invitation to Bid.

Eligible Purchasers.

DigitalEdge is requesting bids on behalf of K-20 educational agencies, including public school districts, nonpublic schools, community colleges, colleges and universities, educational service districts, state departments of education, public libraries, vocational and technical schools, and state-approved private and charter schools in the following states: **(Amendment 5/2017)**

Alaska • California • Colorado • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

Membership is not required for Purchasers to be able to participate in the Contract. All ~~interested organizations~~ Eligible Purchasers are advised to check their governing laws and to obtain their own legal counsel to determine eligibility for purchasing products from the DigitalEdge Contract. **(Amendment 5/2017)**

While the primary goal of the bid is to achieve best pricing for educational organizations, ~~there is an opportunity to extend the Contract to other public organizations, where permissible by statute or regulation~~ it is the responsibility of the Awarded Bidders and Eligible Purchasers to determine whether they are in compliance with the agreement, state laws and regulations. **(Amendment 5/2017)**

Marketing.

The DigitalEdge utilizes a comprehensive marketing plan that promotes the Contract and provides information about the DigitalEdge products and pricing. Intended for Awarded Vendors that are in compliance with the Contract and that have demonstrated active participation in the Contract, the following are provided:

- **Availability of the DigitalEdge Web Site.**

The DigitalEdge office maintains a web site that includes a searchable database of awarded products on the Contract and their current Contract price; downloadable bid documents including the Invitation to Bid, related bid documents, and affidavits; information about Interlocal Agreements; Vendor information; and other pertinent information that assists Purchasers and the Awarded Bidders. The DigitalEdge web site also links to all Awarded Bidders' DigitalEdge-specific web sites, thereby increasing visibility of the Awarded Bidders and their awarded solutions on the Contract.

- **Power Deals.**

The DigitalEdge provides a web site entitled **Power Deals** whereby Awarded Bidders can advertise special promotions on awarded products, with a specific start and end date.

- **DigitalEdge App.**

The DigitalEdge provides a free app (for iOS and Android devices) that includes information about products, pricing, Power Deals, purchasing instructions, and more. Notifications are used for up-to-date announcements about new products or activities that are of interest to the Eligible Purchasers.

- **E-Mail Blasts.**

The DigitalEdge office maintains mailing lists of district technology directors and purchasing managers in the twelve states named in the Contract. The Project Coordinator of DigitalEdge sends out a monthly *Cutting Edge* e-mail blast to these key decision-makers in the states in which that Awarded Bidder received a Contract.

- **Social Media.**

The DigitalEdge office utilizes social networking tools such as Facebook, Twitter, and YouTube to market the Contract and awarded products.

- **Other DigitalEdge Marketing.**

The DigitalEdge utilizes the services of the ESD 112 Office of Public Information for assistance and direction with DigitalEdge marketing activities. Marketing activities include, but are not limited to brochures and flyers, mailers, e-mail blasts, visitations, product webinars, and other pertinent activities that promote the Contract to Eligible Purchasers.

Communication with Awarded Bidder.

The DigitalEdge office works with the Awarded Bidders to keep them apprised of state and federal grants, regional efforts with school improvement and student achievement, and research on empirically-proven instructional strategies.

The DigitalEdge office also informs Awarded Bidders when there is a conference or other special event that they may wish to consider attending when it is in their best interest to market their awarded products to the audience in attendance.

Visibility for the Awarded Bidder.

Awarded Bidders are provided numerous opportunities to increase their visibility with potential Purchasers by sponsoring events, providing vendor exhibits, hosting “lunch and learns,” and participation in other such activities and events.

IMPORTANT INFORMATION FOR BIDDERS

Bidders shall refer to the Invitation to Bid for the Scope of Work, Instructions for Bidding, and Instructions for Submitting Bid Materials.

Request for Clarification Regarding the Invitation to Bid.

Upon release of an Invitation to Bid (ITB), all Bidder communications regarding the Invitation to Bid shall be in writing and directed to the ESD 112 Project Coordinator of DigitalEdge in an e-mail message addressed to **digitaledge.specialist@esd112.org**. Unauthorized contact regarding the Invitation to Bid with other ESD employees, school district personnel, consultants and members of ESD 112's governing board may result in disqualification. Any oral communications shall be considered unofficial and non-binding on ESD 112. Responses to verbal requests for information or clarification shall be considered unofficial until confirmed in written Addenda. Interested Bidders shall rely only on the responses to inquiries, clarification statements, and written Addenda that shall be published on the DigitalEdge web site.

1. Bidders shall notify the Project Coordinator of DigitalEdge of any ambiguity, inconsistency, or error which they may discover upon examination of the ITB documents. Bidders shall familiarize themselves with the requirements and instructions, and shall send an e-mail to **digitaledge.specialist@esd112.org** regarding any concern no later than the date specified in the timeline. The submittal of a Bid constitutes acceptance of specified products and procedures as sufficient and satisfactory.
2. Bidders may inquire about general information pertaining to an Invitation to Bid by sending an e-mail to **digitaledge.specialist@esd112.org** no later than the date specified in the timeline. All inquiries and responses shall be posted on the Current Invitation to Bid web page, located under the **Vendor menu** of the DigitalEdge web site at **digitaledge.esd112.org** no later than the date specified in the timeline.
3. Any substantive interpretation, correction or modification to the Invitation to Bid documents shall be made by written Addendum. Addenda shall be made available on the Invitation to Bid web page under the **Vendor menu** at **digitaledge.esd112.org**. Interpretations or corrections of, or changes to the ITB documents made in any other manner shall not be binding, and Bidders shall not rely upon such interpretations, corrections and changes.
4. Addenda shall be posted no later than the date specified in the timeline.
5. It is the Bidder's responsibility to check the DigitalEdge web site for Addenda. Addenda shall not be sent out by e-mail; they shall only appear on the DigitalEdge web site at **digitaledge.esd112.org**.
6. Bidders shall complete and sign the form on Page 1 of *all* addenda, and shall include each form with the bid materials, as per the Instructions for Bidding in the Invitation to Bid.

Additional Information.

Together, the Invitation to Bid (Part 1) *and* this Contract (Part 2) shall constitute the entire Contract. Bidders are advised to become familiar with all sections of the Invitation to Bid, Contract, and addenda prior to submitting a bid.

1. **Contact Information.**

Technical or programmatic questions about the DigitalEdge program at ESD 112 or the Invitation to Bid shall be directed to the Project Coordinator of DigitalEdge via e-mail at **digitaledge.specialist@esd112.org**.

2. **Following Directions.**

Following directions in submitting a bid is an indicator of a Bidder's responsiveness to the Invitation to Bid. Bids that are not submitted in accordance with the bid submission requirements and instructions may be rejected.

3. **Clarity of Responses.**

Bidders shall respond to all bid submission requirements with direct, concise, complete and correct data and information, avoiding ambiguity in the Invitation to Bid.

4. **Coordination of Efforts.**

Bidders that divide efforts within their organizations to complete the bid documents are advised to review all bid documents for clarity, accuracy and completion. Bid documents that have conflicting or missing information within their bids, or bids that are completed in a manner that makes it impossible to compare against other bids, shall be rejected.

5. **Careful Planning of Submission.**

Bidders are advised to plan the submission of their bids well in advance of the deadline, to avoid unanticipated delivery problems that are out of the control of the Bidder or the DigitalEdge office. Such delays could be caused by postal problems, delayed delivery and transportation vehicles, and unfavorable weather conditions. The DigitalEdge shall not be responsible for any late submissions, and reminds Bidders to avoid potential delivery problems by submitting their bids early. ***Bids that are received at ESD 112 after the deadline for submission shall be rejected.***

6. **Bid Forms.**

Bidders shall use the DigitalEdge Bid Forms for this Invitation to Bid. Bid forms are available for download on the DigitalEdge website (digitaledge.esd112.org), located under the **Vendor menu**. ***Bidders that do not use and submit the correct DigitalEdge bid form(s) shall be evaluated as non-responsive and their bid(s) shall be rejected.***

**BIDDERS ARE ADVISED TO
REVIEW THEIR BIDS FOR
CLARITY, ACCURACY AND COORDINATED EFFORTS
BEFORE
SUBMITTING THEIR MATERIALS**

POST-AWARD REQUIREMENTS

In order to be eligible for an award, Bidders shall demonstrate in their Bidder's Qualification Form (Appendix A) that they can meet the following requirements and provide the following services for the Contract.

The Awarded Bidder shall attend one of the Mandatory Virtual Bidders' meetings listed in the timeline in the Invitation to Bid to discuss all Scope of Work and Post-Award requirements, including:

1.0 **Provision of Required Post-Award Materials.**

No sales can be made to Eligible Purchasers until (1) the effective Contract date identified in the Final Letter of Award, and (2) the date that all required Post-Award Materials are submitted to the DigitalEdge office. Refer to the estimated timeline on the ITB. Modified timelines that result from longer bid evaluations or protest periods shall prevail over the estimated timeline.

1.1 **Evidence of Mandatory Insurance.**

The Awarded Bidder shall submit a Certificate of Insurance and Copies of Insurance Policies for the following to the Project Coordinator of DigitalEdge by the deadline listed in the ITB:

1.1.1 As a part of the Contract requirements, the Awarded Bidder shall obtain at their own cost and expense and keep in force and effect during the term of the Contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the ESD 112 Project Coordinator of DigitalEdge. All Awarded Bidders or their agent(s) shall carry Comprehensive General Liability, Workman's Compensation, Product Liability and Automotive Liability Insurance coverage limits as listed below:

1.1.1.a Comprehensive General Liability - \$1,000,000.00.

1.1.1.b Product Liability - \$1,000,000.00.

1.1.1.c Worker's Compensation Insurance - \$500,000.00

1.1.2 Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$1,000,000.00 each accident as to bodily injury / personal injury and property damage.

1.1.3 The Awarded Bidder and/or their authorized agent(s) shall provide the Project Coordinator of DigitalEdge written notice of cancellation or material changes of any policies within forty-five days of the impending revision to the policy.

Attn: Bunny Stevens
Project Coordinator of DigitalEdge
Contract No. #ESD112-DE-15A
Educational Service District 112
2500 NE 65th Avenue
Vancouver, WA 98661-6812

1.1.4 **The Educational Service District 112 shall be named as an additional insured.**

- 1.2 **Completed Template for Ordering Instructions/Return Policy/Web Site Info.**
After awards are made, the Project Coordinator of DigitalEdge shall issue a template to all Awarded Bidders that provides guidance for providing the DigitalEdge office with information about the Bidder's ordering instructions, return policy and web site information. The template shall be in Microsoft Word format for easy completion by the Awarded Bidder. This document shall be returned to the Project Coordinator of DigitalEdge in Microsoft Word format via e-mail by the due date listed in the timeline in the ITB.
- 2.0 **Personal Assistance.**
Awarded Bidders shall provide personal support and assistance to Purchasers, where "personal" means that the pre- and post-sale support and assistance shall be available by phone, email, or on-site when requested by the Purchaser.
- 2.1 **Requirements for Personal Assistance.**
Bidders or their agents shall have personnel that are available to provide the following kind of personal assistance and to carry out the following responsibilities in the states for which they receive an award:
- 2.1.1 Meet or talk with Purchasers when requested;
 - 2.1.2 Provide current custom catalogs and/or DigitalEdge Product and Price Lists;
 - 2.1.3 Provide demonstrations in person or via webinars;
 - 2.1.4 Assist Purchasers with product evaluation and selection;
 - 2.1.5 Provide basic training when requested;
 - 2.1.6 And generally provide a high level of customer service.
- 2.2 **Response Time.**
Each Awarded Bidder is expected to respond to Purchaser inquiries within three business days; however, a 24-hour callback is desirable.
- 3.0 **Purchasing Process and Documentation.**
Awarded Bidders and their agents shall assist Purchasers with making purchases through the DigitalEdge Contract, and are held responsible for knowing, understanding and communicating the information in this section (Section 3.0) to all Eligible Purchasers.
- 3.1 **Referring Purchasers to Governing Laws.**
Purchasers shall refer to their own governing laws and/or obtain their own legal advice to determine what actions shall be taken to purchase via the DigitalEdge Contract. ESD 112 shall execute an Interlocal Agreement with any Purchaser that requests one by contacting the DigitalEdge office by phone or e-mail.
- 3.2 **Procedures.**
For accuracy of placing orders and audit purposes, Purchasers shall contact the Awarded Bidder for purchasing information on awarded DigitalEdge products. Purchasers shall purchase awarded products on the DigitalEdge Contract in accordance with the following requirements, terms and agreements:

- 3.2.1 At the time of the Award, the Project Coordinator of DigitalEdge shall provide the Awarded Bidders with a template to use for their ordering instructions. An Awarded Bidders' ordering instructions shall include all required information on the template.
- 3.2.2 Purchasers shall work with the key contact person published in the DigitalEdge marketing materials to get the necessary information or assistance that is pertinent to placing an order for awarded DigitalEdge products they wish to purchase.
- 3.2.3 Awarded Bidders shall provide all Purchasers with a price quote for the desired items **at or below the DigitalEdge Contract price**, and any pertinent shipping and handling costs.
- 3.2.4 Awarded Bidders shall provide Eligible Purchasers with complete and accurate instructions on how to initiate the transaction in a manner that protects purchasers from audit findings. This information shall be provided in the ordering instructions template that the Awarded Bidder shall complete after the award of contracts. Bidders shall abide by the instructions provided on the order instructions template.
- 3.2.5 Awarded Bidders shall fill the order and ship the products directly to the Purchaser at the "Ship to" address on their purchase order. No action shall be taken by the Awarded Bidder on the transaction until the purchase order is received at their office. Purchasers shall not be responsible for payment of any unauthorized or undocumented purchases.
- 3.2.6 Awarded Bidders shall correct any order discrepancies.
- 3.2.7 Awarded Bidders shall invoice the Purchaser directly at their "Bill to" address on the purchase order. All invoices shall be itemized and shall include the purchase order number on them. The Purchaser shall only pay for items that are delivered and acceptable. The Purchaser shall make the payment directly to the Awarded Bidder.

4.0 **Shipping / Delivery and Freight Terms.**

4.1 **Delivery Hours.**

Delivery hours are typically between 8:00 a.m. and 4:00 p.m., Mondays through Fridays, excluding all major holidays, unless special arrangements have been made. All products shall be delivered directly to the Purchaser's destination within four weeks of receiving the purchase order.

4.2 **Delays in Shipping.**

If the Awarded Bidder anticipates an unexpected delay, the Awarded Bidder shall inform the Purchaser of the anticipated delivery date in writing or by phone. Purchaser has the option of canceling the purchase order or accepting the new delivery date.

4.3 **F.O.B. Destination.**

Awarded Bidders shall deliver products **FOB: Destination** (seller retains title and control of goods until they are delivered and the contract of carriage has been completed and the bill of lading has been signed by the Purchaser) to specific locations in the states named within the bid.

- 4.4 **Express Shipping.**
Awarded Bidders may charge Purchasers for express shipping when requested by the Purchaser. Awarded Bidders shall list and describe their shipping options in their ordering instructions.
- 4.5 **Shipping Errors.**
Awarded Bidders agree that shipping errors shall be at the expense of the Bidder. For example, if a Bidder ships a product to a Purchaser that was not ordered, it is the responsibility of the Bidder to pay for return mail or shipment, at the convenience of the Purchaser.
- 4.6 **Special Delivery.**
Awarded Bidders that receive purchase orders that require special delivery terms that cannot be met may refuse the order and return the purchase order to the Purchaser within three business days. The Awarded Bidder shall explain, in writing, why it cannot fill the order and meet the delivery requirements.
- 4.7 **Required Packing List.**
A packing list shall be furnished with each shipment that includes the Purchaser's name, purchase order number, contact number, quantity and other pertinent information. The Awarded Bidder shall be able to provide evidence that the products were delivered, upon request.
- 5.0 **Special Pricing and Bundles on Awarded Products.**
- 5.1 **Lower Prices.**
Awarded Bidder(s) may offer a more competitive price by offering a lower single-unit Contract price to any Eligible Purchaser(s) in the states in which the Bidder is awarded a Contract.
- 5.2 **Volume Purchases.**
For a purchase that will exceed \$50,000, an Awarded Bidder may submit a request form to the Project Coordinator of DigitalEdge seeking a reduction in the administrative fee *prior* to the transaction being completed.
- 5.2.1 The request form shall be available in the vendor area of the DigitalEdge web site, and shall identify the amount of the reduction that is sought and the reasons the Awarded Bidder believes the reduction is warranted.
- 5.2.2 To be eligible to request such a reduction:
- 5.2.2.a The purchase shall be made on a single transaction, or several transactions from various schools in a single district shall submit their purchase orders to the Awarded Bidder within a time period of five business days.
- 5.2.2.b The Awarded Bidder may demonstrate additional price reductions. (The inclusion of value-added services in the adjusted Contract prices shall not be considered an equivalent of a monetary reduction to the Contract price.)
- 5.2.3 Upon receipt of a request for a reduction in the administrative fee, the Project Coordinator of DigitalEdge shall utilize a published table with required criteria for reducing the administrative fees. The table shall be downloadable from the vendor area

of the DigitalEdge web site. The Project Coordinator of DigitalEdge shall have up to five business days to approve a reduction. Most often, it is approved within 48 hrs.

5.2.3.a Any variation from required criteria shall be returned to the requesting Bidder, who has the option of correcting the error and re-submitting the request.

5.2.4 Once a request for a reduction in administrative fee is approved, the Awarded Bidder shall quote the exact adjusted Contract price to the Purchaser that is noted on the approved request form. All final paperwork shall quote and note this approved adjusted price.

5.2.4.a The Awarded Bidder shall send the Project Coordinator of DigitalEdge a copy of the final quote that is sent to the Purchaser and that is a result of the reduced administrative fee.

5.2.4.b Paperwork that does not consistently quote this approved adjusted price shall result in applying the full administrative fee to that volume sale, even though an adjustment in administrative fee was approved.

5.2.4.c The Awarded Bidder shall track their approved reductions of administrative fees on the formulated DigitalEdge monthly sales reports, available on the DigitalEdge website. If reductions are not claimed on the sales reports, the DigitalEdge office shall assess the full administrative fee to the Awarded Bidder. No refunds or credits shall be given by the DigitalEdge if the Awarded Bidder fails to claim their reduced administrative fee on their reports.

5.3 **Special Product Bundles.**

Awarded Bidders may bundle awarded solutions to provide additional savings and convenience to Purchasers.

5.3.1 The Contract price of the product bundles shall be equal to or lower than the combined Contract pricing of the bundled products; *and*

5.3.2 The bid price of the bundle shall be included in the price quote provided to the Purchaser by the Awarded Bidder.

5.4 **PowerDeals (Special Promotions).**

Awarded Bidders may ask the DigitalEdge to market their specials and promotions on awarded product lines through the use of the DigitalEdge PowerDeals web site, the DigitalEdge app, and through email blasts to district technology directors in the states where the contract was awarded.

5.4.1 The request form shall include pertinent data about the special promotion of the awarded product, and shall be submitted to the Project Coordinator of DigitalEdge in Microsoft Word format. The request shall be approved before the **PowerDeal** web page is created and launched.

5.4.2 Promotional items shall be on the current DigitalEdge Bid Price Document that the Project Coordinator of DigitalEdge has on file.

- 5.4.3 The DigitalEdge requires up to five business days for approval. Most often, it is approved within 48 hrs.

6.0 **Marketing and Communication Requirements.**

DigitalEdge promotes Awarded Bidders' products on the Contract in accordance with the description in the Background section of this document. However, the Awarded Bidder shall agree that the DigitalEdge of ESD 112 does not guarantee any sales to Eligible Purchasers. Awarded Bidders shall aggressively market their DigitalEdge products to generate sales. By submitting a bid, the Bidder is agreeing to participate fully in all marketing activities in this section (Section 6.0).

6.1 **Logos and Banner Advertising.**

- 6.1.1 All communication and marketing activities conducted by Awarded Bidders that reference the DigitalEdge Contract shall utilize the DigitalEdge logo.
- 6.1.2 Awarded Bidders shall provide the Project Coordinator of DigitalEdge with its company logo, as well as manufacturer logos, in high and low resolution for use in DigitalEdge marketing materials and on the DigitalEdge web site, as well as photos of awarded products. Exact specifications shall be worked out individually.

6.2 **Web Site with Contract Information.**

Awarded Bidders are required to provide a DigitalEdge-specific web site. The web site shall be operational prior to the launch date noted on the timeline of the ITB. The Awarded Bidder shall report its URL to the Project Coordinator of DigitalEdge prior to the launch date.

- 6.2.1 The DigitalEdge office shall provide a template for the Awarded Bidder to use as they develop their DigitalEdge web site. After awards are made, the template shall be downloadable from the vendor area on the DigitalEdge web site and the Awarded Bidder shall provide all required information on the template.
- 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 section 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 hrs.
- 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, 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.

6.4 Marketing Brochures, Flyers and Catalogs.

All marketing materials (print-based and electronic) that advertise awarded products 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. **(Addendum #5)**

- 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 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 Contract prices may only increase when the market conditions result in harm to the Awarded Bidder. "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."
- 7.4.2.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 11/2015)~~
- 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 sales generated under or as a consequence of the awarded DigitalEdge Contract(s)**.

8.2 No Sales.

Awarded Bidders that generate no sales during a month shall still submit a sales report for that month.

8.2.1 When an Awarded Bidder has had no sales 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 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.

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 sales 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 Section 8 of the Terms and Conditions;
- 5.1.1.d Refusal to comply with the Shipping, Delivery and Freight Terms as defined in Section 3.6.2 of the Instructions for Bidding, and Section 4.0 of the Post-Award Requirements;
- 5.1.1.e Including sales tax in the bid price, as defined in Section 3.7 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 Sections 7.2 through 7.4 of the Post-Award Requirements;
- 5.1.1.g Refusal, or continued tardiness in providing the DigitalEdge office with price verification documentation during a DigitalEdge price audit, as described in Section 7.5 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 Section 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 Section 9.0 of the Post-Award Requirements;
- 5.1.1.j Refusal to comply with all insurance requirements as defined in Section 1.1 in the Post-Award Requirements;
- 5.1.1.k Violation of any of the Bidder integrity provisions stated in Section 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.

5.1.2 **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 pertinent awarded product or manufacturer's product line or category.
- 5.1.2.b Terminate the DigitalEdge Contract and end the Awarded Bidder's participation in the DigitalEdge Program.
- 5.1.2.c Award the Contract to the next lowest responsive, responsible Bidder for those states.
- 5.1.2.d Re-bid that pertinent manufacturer product line.

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 Sections 2.0 and 3.0 in the Post-Award Requirements;
- 5.2.1.b Failure to perform the marketing requirements as defined in Section 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 Section 8.0 of the Post-Award Requirements; or the monthly remittance of Administrative Fees to ESD 112, as defined in Section 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.