Master Contract Number T03-MST-002

for

Support and Maintenance Services for Information Technology Equipment

between the

Department of Information Services

and

Edge Systems Incorporated

Effective Date: August 12, 2002

Table of Contents

1. Definition of Terms 1

Contract Term

2. Term 4
3. Survivorship 4

Pricing, Invoice And Payment

4. Pricing 5
5. Advance Payment Prohibited 5
6. Taxes 5
7. Invoice and Payment 6
8. Overpayments to Vendor 7

Vendor's Responsibilities

9. RFP Mandatory Requirements 7
10. Vendor Requirement to Provide Service 7
11. Service Personnel 7
12. Designated Point of Contact 8
13. Escalation Procedures 8
14. Acceptable Equipment Replacements 8
15. Manufacturer Warranty Status 8
16. Stand-alone Preventative Maintenance Service 8
17. Time and Material Maintenance Services 8
18. Contracted Maintenance Services 9
19. Contracted Maintenance Services and SWO 11
20. Ownership/Rights in Data 12
21. Site Security and Care of Equipment 12
22. Vendor Commitments, Warranties and Representations 13
23. Protection of Purchaser's Confidential Information 13

Contract Administration

24. Legal Notices 14
25. DIS Contract Administrator 14
26. Section Headings, Incorporated Documents and Order of Precedence 15
27. Entire Agreement 15
28. Authority for Modifications and Amendments 15
29. Additional Services 16
30. Independent Status of Vendor 16
31. Governing Law 16
32. Subcontractors 16
33. Assignment 17

34. Publicity 17
35. Review of Vendor's Records 17
36. Right of Inspection 18

General Provisions

37. Patent and Copyright Indemnification 18
38. Save Harmless 19
39. Insurance 19
40. Industrial Insurance Coverage 20
41. Licensing Standards 20
42. Antitrust Violations 20
43. Compliance with Civil Rights Laws 20
44. Severability 21
45. Waiver 21
46. Treatment of Assets 21
47. Vendor's Proprietary Information 21

Disputes and Remedies

48. Disputes 22
49. Attorneys' Fees and Costs 22
50. Non-Exclusive Remedies 23
51. Credits for Failure to Perform 23
52. Failure to Perform 23
53. Limitation of Liability 23

Contract Termination

54. Termination for Default 24
55. Termination for Convenience 25
56. Termination for Withdrawal of Authority 25
57. Termination for Non-Allocation of Funds 25
58. Termination for Conflict of Interest 25
59. Termination Procedure 25
60. Covenant Against Contingent Fees 26

Activity Reporting and Administration Fee

61. DIS Master Contract Administration Fee and Collection 26
62. Activity Reporting 27
63. Failure to Remit Reports/Fees 27

Contract Execution

64. Authority to Bind 27
65. Counterparts 28

Schedules

Schedule A: *Authorized Services and Price List*
Schedule B: *Supplemental Work Order Template*
Schedule C: *Vendor's Problem Escalation Procedures*
Schedule D: *Preventative Maintenance Service Specifications*

Exhibits

Exhibit A: DIS *Request for Proposals for Support and Maintenance Services for Information Technology Equipment*
Exhibit B: *Vendor's Response*

CONTRACT NUMBER T03-MST-002
for
Support and Maintenance Services for Information Technology Equipment

PARTIES

This Master Contract ("Contract") is entered into by and between the state of Washington, acting by and through the **Department of Information Services ("DIS")** an agency of Washington State government located at 2411 Chandler Court SW, Olympia, WA 98502, and **Edge Systems Incorporated ("Vendor" or "Edge Systems")**, a corporation licensed to conduct business in the state of Washington, located at 9730 Lathrop Industrial Drive, Suite F1, Olympia, WA 98512, for the purpose of providing Support and Maintenance Services for information technology equipment on a statewide basis.

RECITALS

The state of Washington, acting by and through DIS, issued a Request for Proposal ("RFP") dated May 28, 2002, revised June 18, 2002, (Exhibit A) for the purpose of purchasing Support and Maintenance Services for information technology equipment in accordance with its authority under chapter 43.105 RCW.

Edge Systems submitted a timely Response(Exhibit B) to DIS' RFP.

DIS evaluated all properly submitted Responses and has identified Edge Systems as the apparently successful Vendor.

DIS has determined that entering into a Contract with Edge Systems will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, DIS awards to Edge Systems this Purchased Services Contract, the terms and conditions of which shall govern Vendor's furnishing to Purchasers Support and Maintenance Services for information technology equipment. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Definition of Terms

The following terms as used throughout this Contract shall have the meanings set forth below.

"Acceptance" shall mean a written notice from Purchaser to Vendor that the replacement equipment has been accepted.

"Business Days and Hours" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"Computer/Computer System" shall include routers, servers, personal computers, desktop computers, workstations, laptop computers, handheld computers, and associated peripheral equipment including but not limited to printers, keyboards and scanners.

"Confidential Information" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser security information, or information identifiable to an individual that relates to any of these types of information.

"Contract" shall mean this Master Contract document, all schedules and exhibits, Supplemental Work Orders, and all amendments hereto.

"Contracted Maintenance Services" ("CMS") shall mean Services agreed to between Purchaser and Vendor in a Supplemental Work Order (SWO) for Service delivery on either an eight (8) hour or a sixteen (16) hour Resolution Time Frame.

"DIS" shall mean the Washington State Department of Information Services.

"DIS Contract Administrator" shall mean the TSD Contract Administrator, who shall be responsible for the maintenance and administration of this Contract, notices, reports and any other pertinent documentation or information. The TSD Contract Administrator may also conduct periodic performance or financial audits related to this Contract.

"DIS Contracting Officer" shall mean the Director of the Department of Information Services or the person(s) to whom signature authority has been delegated in writing.

"Effective Date" shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

"Exhibit A" shall mean the RFP.

"Exhibit B" shall mean Vendor's Response to the RFP.

"Preventative Maintenance Services" shall mean cleaning, lubricating, adjusting, and replacing parts on an annual basis to keep the equipment in good operating condition. Preventative Maintenance Services can be provided under CMS or on a standalone, i.e., Time and Materials, basis.

"Price" shall mean charges, costs, rates, and/or fees charged for the Services under this Contract and shall be paid in United States dollars.

"Product(s)" shall mean any Vendor-supplied equipment, Software, and documentation.

"Proprietary Information" shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

"Purchased Services" shall mean those Services and activities provided by Vendor to accomplish routine, continuing, and necessary functions as set forth in this Contract or a SWO. Purchased Services shall include those Services specified as Purchased Services in RCW 43.105.020.

"Purchaser" shall mean DIS and those government or nonprofit entities who have entered into an Interlocal or Customer Service Agreement with DIS.

"RCW" shall mean the Revised Code of Washington.

"Resolution Time Frame" shall mean the Purchaser-specified number of Business Hours, either eight (8) or sixteen (16), within which Vendor shall repair or replace equipment, as set forth in a SWO for CMS. The Resolution Time Frame for each incident starts when Purchaser notifies Vendor at the prearranged contact point that Service is required and continues until the equipment is repaired or replaced at Purchaser's site.

"RFP" shall mean the *Request for Proposal for Support and Maintenance Services for Information Technology Equipment* used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

"Response" shall mean Vendor's Response to DIS' RFP, Exhibit B hereto.

"Response Time" shall mean the time from Purchaser notification to Vendor of a problem until Vendor's arrival on site to begin the repair process.

"Schedule A: *Authorized Services and Price List*" shall mean the attachment to this Contract that identifies the authorized Services and Prices available under this Contract.

"Schedule B: *Supplemental Work Order Template*" shall mean the attachment to this Contract that provides example terms and conditions for a SWO.

"Schedule C: *Problem Escalation Procedures* shall mean the attachment that provides the details of the problem escalation procedure that will be used when a problem is difficult to solve or takes longer than expected to solve, setting forth who is consulted or informed, when they are consulted or informed, and what additional resources are added at each escalation of the problem.

"Schedule D: *Preventative Maintenance Specifications*" shall mean the attached list of requirements for Preventative Maintenance for personal computer and monitor, dot-matrix, ink jet and laser printers.

"Services" shall mean Support and Maintenance Services.

"Software" shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

"Specifications" shall mean the technical and other specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor's Response, Exhibit B.

"Supplemental Work Order" or **"SWO"** shall mean a separate agreement between Purchaser and Vendor specifying the Contracted Maintenance Services to be provided by Vendor under the terms and conditions of this Contract. A template SWO is attached as Schedule B.

"State" shall mean DIS, any division, section, office, unit or other entity of DIS or any of the officers or other officials lawfully representing DIS. State may also include Purchaser.

"Support and Maintenance Services" shall include, but not be limited to, installation, emergency repair, preventative maintenance, CMS, temporary storage, delivery, and help-desk. Support and Maintenance Services shall include those services required to maintain information technology equipment within the scope of Exhibit A.

"Subcontractor" shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term "Subcontractor" means Subcontractor(s) of any tier.

"Systems Configuration(s)" see the definition for Computer/Computer Systems, above.

"Time and Materials Services" shall mean equipment repair Services performed by Vendor on equipment not covered by CMS, or Services in addition to CMS, as requested by Purchaser.

"Vendor" shall mean Edge Systems Incorporated, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

"Vendor Account Manager" shall mean a representative of Vendor who is assigned as the primary contact person whom the DIS Contract Administrator shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

"Work Product" shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

Contract Term

2. Term

2.1. Term of Contract

a) This Contract's initial term shall be three (3) years, commencing upon the Effective Date.

b) This Contract's term may be extended by three (3) additional one (1) year terms, provided that the extensions shall be at DIS' option and shall be effected by DIS giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term's expiration and Vendor accepting such extension prior to the then-current Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

2.2. Term of Supplemental Work Order (SWO).

The term of any SWO executed pursuant to this Contract shall be set forth in the SWO. The term of the SWO shall *not* exceed the term of this Contract. The SWO may be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

3. Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to**

Vendor; Ownership/Rights in Data; Vendor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and **Limitation of Liability** shall survive the termination of this Contract.

Pricing, Invoice and Payment

4. Pricing

4.1. Vendor agrees to provide the Services at the Prices set forth in Schedule A. No other Prices shall be charged by Vendor for implementation of Vendor's Response.

4.2. Prices may not be increased during the initial term of the Contract.

4.3. If Vendor reduces its Prices for any of the Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the Purchaser Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.

4.4. At least one hundred twenty (120) calendar days before the end of the then-current term of this Contract, Vendor may propose Service rate increases by written notice to the DIS Contract Administrator. Any such percentage increase shall not be greater than five percent (5%) plus the percentage increase in the Consumer Price Index (as reported by the Bureau of Labor Statistics) for the prior annual reporting period. Price adjustments will be taken into consideration by DIS when determining whether to extend this Contract.

4.5. Vendor agrees that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to the State for subsequent purchases.

4.6. Vendor shall ***not*** be reimbursed for any expenses related to travel, i.e., per diem, meals, lodging, etc., except as specifically provided as follows: Vendor may bill for travel (round trip) for actual time spent or a total of two (2) hours for any service visit, whichever is less.

5. Advance Payment Prohibited

No advance payment shall be made for Services furnished by Vendor pursuant to this Contract. Notwithstanding the above, payments for CMS may be made in advance on a monthly, quarterly or annual basis, at Purchaser's option.

6. Taxes

6.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property.

6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

7. Invoice and Payment

7.1. Vendor will submit properly itemized invoices to each Purchaser in duplicate at the address(es) indicated in the purchase order document or the SWO no later than the tenth working day of each month for the previous month's activity, unless otherwise provided in a SWO for CMS. Invoices shall provide and itemize, as applicable:

a) This Master Contract number, T03-MST-002;

b) Purchaser's SWO number;

c) Vendor name, address, phone number, e-mail address, fax number and Federal Taxpayer Identification Number;

d) Description of Services provided, i.e., CMS or Time and Materials Services;

e) For Contracted Maintenance – dates of service period (i.e., monthly, quarterly, or annually), description of covered equipment, including type, model, Purchaser asset tag number or serial number, location;

f) In addition, for Preventative Maintenance, whether part of CMS or on standalone, i.e., Time and Materials basis — description of equipment serviced, type, model, Purchaser asset tag number or serial number, location;

g) For Time and Materials Services – Purchaser's location, specific description of work provided, dates and time of Services, itemized list of materials charges, number of labor hours, number of travel hours*;

h) Vendor's Price for Services;

i) Net invoice Price for each Service;

j) Applicable taxes;

k) DIS Master Contract Administration Fee (0.5% or 0.005 of the total purchase price);

l) Other applicable charges;

m) Total invoice Price; and

n) Payment terms including any available prompt payment discounts.

*Total billable time for travel (round trip) for any single service cannot exceed two hours.

7.2. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.

7.3. Payments for CMS may be made in advance on a monthly, quarterly or annual basis, at Purchaser's option. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day. Payments for Time and Materials Services shall be monthly in arrears.

7.4. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.

7.5. The Master Contract number, T03-MST-002, and the applicable Purchaser SWO number must appear on all bills of lading, packages, and correspondence relating to this Contract.

7.6. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.

7.7. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar ($1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Vendor's properly prepared invoice, whichever is later.

8. Overpayments to Vendor

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, Purchaser may charge Vendor one percent (1%) per month on the amount due, until paid in full.

Vendor's Responsibilities

9. RFP Mandatory Requirements

The RFP mandatory requirements are essential substantive terms of this Master Contract. Services provided under this Contract shall meet or exceed all the mandatory requirements of the RFP.

10. Vendor Requirement to Provide Service

10.1. Vendor may not decline a request by a Purchaser for CMS based on the Purchaser's requirement for a Resolution Time Frame that is included in the scope of the Master Contract.

10.2. Vendor shall provide ***statewide*** Support and Maintenance Services for Information Technology equipment on either a Time and Materials basis or CMS (CMS) as bid in Vendor's Response. Vendor may not decline a Purchaser's request for either Time and Materials Services or CMS based on the geographical location of the equipment.

11. Service Personnel

Vendor's Support and Maintenance Services will be provided by Service personnel who shall have the following qualifications:

11.1. A minimum of two years of work experience repairing personal computers, workstations, and peripheral equipment; or

11.2. One year of technical related education and one year of work experience repairing personal computers, workstations, and peripheral equipment.

12. Designated Point of Contact

Vendor's designated point of contact for Purchaser to request Support Services, contact Service personnel, request problem status updates, and receive problem resolutions is via toll free number: (800) 308-0092, Monday – Friday, 7:30 a.m. – 6:00 p.m. After hours requests can be made by paging (360) 534-8291, or via email to: bob.turner@edgewa.com.

13. Escalation Procedures

Vendor's Escalation and Notification Procedures are attached as Schedule C to this Master Contract. In addition, Vendor shall provide a copy of its current Escalation and Notification Procedures in each SWO for CMS. Any changes to the Escalation and Notification Procedures shall be provided in writing to DIS and all Purchasers who have a CMS SWO.

14. Acceptable Equipment Replacements

All replacement equipment provided by Vendor under this Contract must be from the same manufacturer (unless the device is no longer manufactured) and equal to or better than the original equipment being replaced (e.g. higher resolution monitor, or larger hard drive) at no additional cost to Purchaser.

15. Manufacturer Warranty Status

15.1. Vendor is an Authorized Warranty Service Provider for the OEMs listed in Schedule A.

15.2. For the purposes of determining the applicable Services Prices for Computer Systems, each piece of Computer System equipment shall be classified by Purchaser according to its OEM Manufacturer Warranty Status, which will be limited to one of the following:

On-Site Warranty	Equipment is covered by the OEM Manufacturer's On-Site Warranty Coverage.
Depot or Carry-In Coverage	Equipment is covered by the OEM manufacturer's Carry-in Warranty Coverage.
No Warranty	Equipment is not covered by any kind of OEM Manufacturer's Warranty whatsoever.

16. Stand-alone Preventative Maintenance Service

Vendor shall provide Preventative Maintenance Services as a stand-alone Service for equipment not covered by CMS at the Prices listed in Schedule A. Preventative Maintenance Services specifications are set forth in Schedule D.

17. Time and Material Maintenance Services

17.1. Vendor may not decline a Purchaser's request for Time and Materials Services based on the geographical location of the equipment.

17.2. Vendor shall respond to Purchaser requests for Time and Material Maintenance Support Services as follows:

a) Same Business Day for Olympia, Tacoma and Southwest Washington;

b) Next Business Day for Seattle and I-5 corridor North;

c) Second Business Day for Eastern Washington.

17.3. Fees for Time and Material Maintenance Services are comprised of any combination of the following three billing components: actual time expended to perform the Service multiplied by Vendor's labor rate in Schedule A, material charges for replacement components or items required to complete the Service and travel charges incurred to complete the Service (maximum of two (2) hours roundtrip per service call).

17.4. Upon request by Purchaser, Vendor shall provide a written estimate of all work and materials needed to complete the repair.

a) The final total labor cost for the job shall not exceed ten percent (10%) of the estimated labor cost, without Purchaser's prior approval.

b) Any costs for materials exceeding ten percent (10%) of the estimate shall be approved by Purchaser ***prior*** to installation.

18. Contracted Maintenance Services

18.1. Vendor may not decline a Purchaser's request for Contracted Maintenance Services (CMS) based on Purchaser's requirement for a Resolution Time Frame that is included in the scope of the Master Contract or on the geographical location of the equipment.

18.2. Vendor may decline to accept specified items of Purchaser equipment for CMS based on an inspection that certifies the equipment is non-maintainable. Purchaser may request Vendor to bring such equipment into a maintainable status on a Time and Materials basis.

18.3. Vendor may decline providing CMS to any new Purchaser if the total number of equipment units (e.g., personal computers and printers) per individual SWO is less than twenty-five (25). There will be no minimum for the addition of equipment units to an existing Purchaser CMS SWO.

18.4. Vendors may decline providing CMS for equipment brands not specified in Schedule A.

18.5. Purchaser will provide Vendor with the following information on each item of equipment to be covered by CMS:

a) type of equipment;

b) model and serial number;

c) Purchaser asset tag number;

d) date of purchase and proof-of-purchase information, if applicable;

e) current OEM warranty status;

f) Resolution Time Frame; and

g) detailed location information including address, name of Purchaser contact person and telephone number.

18.6. Vendor will maintain a database containing the Purchaser-provided information on the covered equipment. In addition Vendor will update its database and provide equipment inventory control information to Purchaser whenever existing equipment is removed from or new equipment is installed at a Purchaser site during the problem resolution process including, at a minimum:

a) type of equipment;

b) model and serial number;

c) Purchaser asset tag number;

d) old location; and

e) new location.

18.7. CMS shall include Preventative Maintenance Service for each item on a regularly scheduled basis (at least once every twelve (12) months) to maintain the equipment in good operating condition. Preventative Maintenance Services specifications are set forth in Schedule D.

18.8. Vendor shall provide Purchaser with a monthly report detailing all Preventative Maintenance Services undertaken and any other maintenance activity for the previous month. The report will identify the equipment by type, model and serial number, Purchaser asset tag number, and change of location information, if applicable, and indicate the Servide provided.

18.9. Resolution Time Frame

a) Vendor shall repair or replace parts or temporarily install another device to return Purchaser-owned equipment to acceptable operating condition at Purchaser's site, within the contracted Resolution Time Frame (i.e., eight (8) or sixteen (16) Business Hours after notification by Purchaser that Service is required). This Resolution Time Frame is required on a statewide basis.

b) The Resolution Time Frame for each incident shall start at the time Purchaser contacts Vendor at the designated point of contact and continue until the equipment requiring service is repaired or replaced at Purchaser's site.

c) Should Vendor fail to return any item of equipment to acceptable operating condition at Purchaser's site within the contracted Resolution Time Frame, Vendor shall grant credit to the basic CMS charges for each piece of equipment. The credit will be calculated as one month's credit per eight (8) Business Hours of unavailability past the time frame committed to by the Vendor for that piece of equipment, up to a maximum of six (6) month's credit. Attaining the maximum credit amount does not release Vendor from the liability to correct the problem. Failure to correct the problem will result in contract default

d) Vendor shall report its monthly percentage compliance with the contracted Resolution Time Frame for each Purchaser in the Monthly Activity Report (see Section 62 below). Compliance is determined by taking the total number of Service calls, less the number of Service calls which exceeded the Resolution Time Frame, divided by the total number of Service calls and converting the resulting number into a percentage. Failure to meet a minimum of ninety percent (90%) Resolution Time Frame compliance for three (3) consecutive months will be deemed a failure to perform. There will be no finding of default, however, if it is determined by DIS that Vendor's failure to maintain the minimum level of compliance is beyond Vendor's control, or is not due to Vendor's fault or negligence.

18.10. Estimated Time of Arrival

a) Vendor shall call Purchaser within one (1) hour after notification by Purchaser that Service is required, and provide an estimated time of arrival (ETA) at Purchaser's site.

b) If Vendor fails to call Purchaser with an ETA within the hour, Purchaser will request to speak to a supervisor and Vendor's supervisor will provide Purchaser an ETA within half an hour. If and ETA is not forthcoming, Vendor shall grant one month's credit to the basic CMS charges per piece of equipment per incident.

c) If Vendor arrives in excess of one (1) hour prior to the ETA or one (1) hour after the ETA, Vendor will grant Purchaser a credit to the basic monthly service charge for that piece of equipment. The credit will be calculated on a basis of one-month credit per item of equipment per incident.

18.11. Vendor repair personnel will provide Purchaser a written status or closeout report of the problem (when it was resolved, what the resolution was, other key information) no more than (1) one hour after arrival at the location for the repair. The actual time of resolution must be provided with any closeout.

18.12. Following hard drive replacement, Vendor will partition, format and install the current level of DOS supplied by Purchaser at no additional cost. Any additional restoration services may be contracted for individually at a fixed price and incorporated into a specific Purchaser's SWO, or provided on a Time and Materials basis.

19. Contracted Maintenance Services and SWO

19.1. CMS shall be documented in a Supplemental Work Order (SWO) established between Purchaser and Vendor. A template for a SWO is attached as Schedule B.

19.2. The SWO shall at a minimum:

a) Reference this Contract number T03-MST-002;

b) Specify the term (Minimum term is three (3) months;

c) Specify compensation and timeline for payment (e.g. monthly, quarterly, annually);

d) Specify Points of Contact

e) Specify Resolution Timeframe, either eight (8) or sixteen (16) Business Hours;

f) Identify all of Purchaser's equipment for which Vendor will provide Services, including equipment type, model and serial number, Purchaser's asset tag number, current OEM warranty status, proof-of-purchase information, if applicable, Resolution Time Frame and detailed location information including address, name of Purchaser contact person and telephone number (see Subsection 18.5 above);

g) Specify a schedule for Preventative Maintenance;

h) Describe Vendor's roles and responsibilities;

i) Describe Purchaser's roles and responsibilities; and

j) Provide a signature block for both parties.

19.3. The Services Price for specific Computer Systems will be allowed to change during the CMS term according to date of purchase and corresponding OEM Manufacturer Warranty Status changes.

19.4. The terms and conditions of any SWO cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Master Contract shall prevail.

20. Ownership/Rights in Data

20.1. Purchaser and Vendor agree that if any data and work products (collectively called "Work Product") are produced pursuant to this Contract, they shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchaser. Vendor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

20.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

20.3. Vendor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.

20.4. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product, without the prior written permission of Purchaser. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

20.5. Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Vendor has a right to grant such a license. Vendor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Vendor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Vendor.

21. Site Security and Care of Equipment

While on Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations. Vendor shall be responsible for care of Purchaser's equipment and any damage to facilities during Servicing.

22. Vendor Commitments, Warranties and Representations

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

23. Protection of Purchaser's Confidential Information

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

23.2. Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser's or DIS' option: (i) certify to Purchaser or DIS that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser or DIS requires of Vendor to protect Purchaser's Confidential Information.

23.3. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records**.

23.4. DIS and Purchaser reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

23.5. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Contract Administration

24. Legal Notices

24.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or via facsimile, to the parties at the addresses and fax number provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Vendor at:

Edge Systems Incorporated

Attn: Robert Turner
9730 Lathrop Industrial Drive

Suite F1
Olympia, WA 98512

Phone: 360-943-3343
Fax: 360-943-3440
E-mail: Bob.Turner@edgewa.com

To Purchaser at:

State of Washington
Department of Information Services
Attn: TSD Contract Administrator

Mailing Address:	*Street Address:*
PO Box 42445	2411 Chandler Court SW
Olympia, WA 98504	Olympia, WA 98502

Phone: 360-725-4200
Fax: 360-664-0711
E-mail: mcadmin@dis.wa.gov

or to **Purchasers** at the addresses and fax number listed on their SWO.

24.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

24.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

25. DIS Contract Administrator

DIS shall appoint the TSD Contract Administrator as the DIS Contract Administrator for this Master Contract who will provide oversight of the activities conducted hereunder. The DIS Contract Administrator will manage this Master Contract on behalf of DIS and will be the principal contact for Vendor concerning Vendor's performance under this Master Contract.

26. Section Headings, Incorporated Documents and Order of Precedence

26.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

26.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

a) Schedules A, B, C, and D;

b) Exhibit A - DIS' RFP for Support and Maintenance Services for Information Technology Equipment, dated May 28, 2002;

c) Exhibit B - Vendor's Response.

d) Any SWO entered into pursuant to this Contract;

e) The terms and conditions contained on Purchaser's purchase documents, if used; and

f) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Services to Purchaser.

26.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

a) Applicable federal and state statutes, laws, and regulations;

b) Sections of this Master Contract;

c) Schedules to this Contract;

d) Exhibit A - DIS' RFP for Support and Maintenance Services for Information Technology Equipment, dated May 28, 2002;

e) Any SWO entered into pursuant to this Contract;

f) Exhibit B - Vendor's Response;

g) The terms and conditions contained on Purchaser's order documents, if used; and

h) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Services to Purchaser.

27. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

28. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract or any SWO under this Contract shall be effective or binding unless it is in writing and signed by Purchaser and Vendor Contracting Officers. Only Purchaser Contracting Officer shall

have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract or SWO on behalf of Purchaser.

29. Additional Services

Additional Services that are appropriate to the scope of this acquisition may be added to this Contract by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services, pricing and additional terms and conditions as relevant. The additional Services shall be available under the same terms and conditions established herein, unless otherwise agreed to in writing.

30. Independent Status of Vendor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent Vendor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

31. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

32. Subcontractors

Vendor may, with prior written permission from Purchaser Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information**, and **Ownership/Rights in Data** sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Publicity** and **Review of Vendor's Records** sections of this Contract shall apply to all Subcontractors.

33. Assignment

33.1. With the prior written consent of Purchaser Contracting Officer, which consent shall be at Purchaser's sole option, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, SWOs, or warranties made herein including but not limited to, rights of setoff.

33.2. Purchaser may assign this Contract or SWOs to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

34. Publicity

34.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Services by Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.

34.2. Vendor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Vendor wherein DIS' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name therewith may, in DIS' or Purchaser's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.

35. Review of Vendor's Records

35.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

35.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.

35.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.

35.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

36. Right of Inspection

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

General Provisions

37. Patent and Copyright Indemnification

37.1. Vendor, at its expense, shall defend, indemnify, and save the State harmless from and against any claims against the State that any Product or Work Product supplied hereunder, or the State's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by the State provided that the State:

a) Promptly notifies Vendor in writing of the claim, but the State's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and

b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

37.2. If such claim has occurred, or in Vendor's opinion is likely to occur, the State agrees to permit Vendor, at its option and expense, either to procure for the State the right to continue using the Product or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product or Work Product and provide the State a refund. In the case of Work Product, Vendor shall refund to Purchaser(s) the entire amount paid to Vendor for Vendor's provision of the Work Product. In the case of Product, Vendor shall refund to Purchaser(s) its depreciated value. No termination charges will be payable on such returned Product, and Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser(s) shall be refunded by Vendor.

37.3. Vendor has no liability for any claim of infringement arising solely from:

a) Vendor's compliance with any designs, specifications or instructions of Purchaser(s);

b) Modification of the Product or Work Product by Purchaser(s) or a third party without the prior knowledge and approval of Vendor; or

c) Use of the Product or Work Product in a way not specified by Vendor;

unless the claim arose against Vendor's Product or Work Product independently of any of these specified actions.

38. Save Harmless

Vendor shall defend, indemnify, and save the State harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save the State harmless shall not be eliminated or reduced by any alleged concurrent Purchaser negligence.

39. Insurance

39.1. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to DIS within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this Contract's termination.

39.2. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than $1 million per accident;

c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than $1 million per accident for bodily injury by accident and $1 million per employee for bodily injury by disease;

d) Umbrella policy providing excess limits over the primary policies in an amount not less than $3 million;

39.3. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name DIS as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number, T03-MST-002, and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.

39.4. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

39.5. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

39.6. Vendor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS' sole option, result in this Contract's termination.

39.7. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to the State in this Contract.

40. Industrial Insurance Coverage

Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

41. Licensing Standards

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

42. Antitrust Violations

Vendor and Purchaser recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges as to goods and Services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

43. Compliance with Civil Rights Laws

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to

comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with Purchaser.

44. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

45. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

46. Treatment of Assets

46.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement under this Contract, shall pass to and vest in Purchaser pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.

46.2. Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.

46.3. Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.

46.4. Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

46.5. Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.

46.6. All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

47. Vendor's Proprietary Information

Vendor acknowledges that Purchaser is subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.17 RCW, Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of

competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

Disputes and Remedies

48. Disputes

48.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

48.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

48.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.

48.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible

48.5. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

48.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

49. Attorneys' Fees and Costs

49.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

49.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

50. Non-Exclusive Remedies

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

51. Credits for Failure to Perform

Vendor shall return the Purchaser-owned equipment to acceptable operating condition within the contracted Resolution Time Frame (i.e., eight or sixteen business hours after notification by Purchaser that service is required). Should Vendor fail to return the equipment to acceptable operating condition at the Purchaser's site within the contracted Resolution Time Frame, Vendor shall grant credit to the basic Monthly Service Charge (MSC) for that piece of equipment.

The credit for Failure To Perform will be calculated on a basis of one-month credit for failure to return the Purchaser-owned equipment to acceptable operating condition within the contracted Resolution Time Frame for that piece of equipment, and an additional one-month credit per each eight (8) business hours of unavailability past the Resolution Time Frame, up to a maximum of six (6) months credit. Award of the maximum credit does not release Vendor from the liability to correct the problem. Failure to correct the problem will result in contract default.

52. Failure to Perform

If Vendor fails to perform any substantial obligation under this Contract, Purchaser or DIS shall give Vendor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then Purchaser or DIS may withhold all monies due and payable to Vendor, without penalty to Purchaser or DIS, until such Failure to Perform is cured or otherwise resolved.

53. Limitation of Liability

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

53.2. Neither Vendor, DIS nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor, DIS or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its

sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, DIS or Purchaser, or their respective Subcontractors.

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

53.4. No party shall be liable for personal injury to the another party or damage to the another party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

54. Termination for Default

54.1. If Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its material obligations under this Contract, then the DIS Contract Administrator or Purchaser shall give Vendor written notice of such failure or violation, and the failure or violation shall be corrected by Vendor within thirty (30) calendar days or as otherwise mutually agreed. If such breach is not capable of cure within thirty (30) days, Vendor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Vendor's failure or violation is not corrected, Purchaser or DIS may pursue immediate termination of a SWO or this Master Contract, as appropriate. In such event, this Master Contract may be terminated immediately by written notice from the DIS Contracting Officer to Vendor, or Purchaser's or DIS' SWO may be terminated by written notice to Vendor.

54.2. In the event of termination of this Master Contract by DIS, DIS shall have the right to procure the Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Services and the replacement costs of such Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to DIS resulting from Vendor's breach. DIS and Purchasers shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe DIS and Purchasers for Vendor's default.

54.3. If either DIS or Purchaser violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its obligations under this Master Contract, then Vendor shall give DIS or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DIS or Purchaser within thirty (30) calendar days, or as otherwise mutually agreed. If such failure to perform is not so corrected, Purchaser's SWO may be terminated by written notice from Vendor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Vendor to DIS.

54.4. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.

54.5. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

55. Termination for Convenience

55.1. When, at the sole discretion of DIS, it is in the best interest of the State, the DIS Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Vendor.

55.2. Purchaser may terminate its CMS SWO upon sixty (60) days notice to Vendor. If a SWO is so terminated, Purchasers are liable only for payments required by the terms of any SWO for Services received and accepted by Purchaser prior to the effective date of termination.

56. Termination for Withdrawal of Authority

In the event that DIS' or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Master Contract or any SWO and prior to normal completion, DIS may terminate this Master Contract, or a Purchaser may terminate its SWO(s), by seven (7) Business Days written notice to Vendor. No penalty shall accrue to DIS and Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its SWO(s) in order to acquire similar Services from a third party.

57. Termination for Non-Allocation of Funds

If funds are not allocated to DIS or a Purchaser to continue this Master Contract or SWO in any future period, DIS may terminate this Master Contract, or Purchaser may terminate its SWO(s) by seven (7) Business Days written notice to Vendor or otherwise work with Vendor to arrive at a mutually acceptable resolution of the situation. DIS or Purchasers will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DIS or Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DIS or Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its SWO(s) in order to acquire similar Services from a third party.

58. Termination for Conflict of Interest

DIS may terminate this Master Contract, or Purchaser its SWO(s), by written notice to Vendor if DIS or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Master Contract or any SWO is so terminated, DIS and Purchasers shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Master Contract or any SWO.

59. Termination Procedure

59.1. Upon termination of this Master Contract or any SWO, DIS and Purchaser, in addition to any other rights provided in this Master Contract and applicable SWO, may require

Vendor to deliver to Purchaser any property or Work Product specifically produced or acquired for the performance of such part of this Master Contract or SWO as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

59.2. Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Master Contract or SWO had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Master Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.

59.3. Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

59.4. Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

60. Covenant Against Contingent Fees

60.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.

60.2. In the event Vendor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser or, in Purchaser's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Activity Reporting and Administration Fee

61. DIS Master Contract Administration Fee and Collection

61.1. All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Vendor and remitted to DIS.

61.2. The Master Contract Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax.

61.3. The Master Contract Administration Fee shall be invoiced by Vendor to all Purchasers as a separate detailed line item on Purchaser's invoice.

61.4. Vendor shall remit the Master Contract Administration Fee directly to the DIS Contract Administrator along with the Master Contract Activity Report.

62. Activity Reporting

62.1. Vendor shall submit to the DIS Contract Administrator a monthly Activity Report of all Services purchased under this Master Contract. The report shall identify:

a) This Master Contract number (T03-MST-002);

b) Each Purchaser making purchases during that quarter;

c) The total purchase price (excluding sales tax) for each Purchaser; and,

d) The sum of all purchase prices (excluding sales tax) for all Purchasers; and

e) The amount of the DIS Master Contract Administration Fee.

62.2. In addition, Vendor shall report its monthly percentage compliance with the contracted Resolution Time Frame for each Purchaser in the Monthly Activity Report. (see Subsection 18.9.d) above)

62.3. The Activity Report and the DIS Master Contract Administration Fee shall be submitted by the 15th calendar day of the month following the month in which Vendor invoiced Purchaser. Vendor shall submit this report according to the layout specified by the DIS Contract Administrator.

62.4. This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Vendor.

62.5. Monthly Activity Reports are required even if no activity occurred.

62.6. Upon request by DIS, Vendor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

63. Failure to Remit Reports/Fees

63.1. Failure of Vendor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Vendor, which may result in DIS terminating this Master Contract with Vendor.

63.2. Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Vendor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.

63.3. The DIS Contract Administrator will notify Vendor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Vendor to a forfeiting Purchaser may be considered failure to perform by Vendor.

63.4. If the performance issues are resolved, DIS, at its option, may reinstate a Vendor's participation or a Purchaser's right to purchase.

Contract Execution

64. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

65. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Approved

State of Washington
Department of Information Services

Signature

Michael D. McVicker
Print or Type Name

Assistant Director 8/12/02
Title Date

Approved

Edge Systems Incorporated

Signature

Casey DeBow
Print or Type Name

Manager 8/12/02
Title Date

Approved as to Form

State of Washington

Office of the Attorney General

via attached email from Chip Holcomb
Signature

Chip Holcomb
Print or Type Name

Senior Counsel, AGO 8-8-02
Title Date

Vendor Information	
Vendor's UBI Number:	**601 426 421**
Minority or Woman Owned Business Enterprise Yes _____ (Certification Number)	No ☒