

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of:

Request for Review and Waiver	)	
of the Decision of the	)	
Universal Service Administrator by	)	
	)	
Edgewood Independent School District	)	CC Docket No: 02-6
BEN Number: 141553	)	
	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	
	)	
Wireline Competition Bureau	)	

**REQUEST FOR REVIEW AND WAIVER**

**INTRODUCTION**

Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission.<sup>1</sup> Edgewood Independent School District (EISD) hereby appeals the current action taken by USAC in the following case. In the alternative, EISD would ask the Commission to waive the rule regarding the posting of a new Form 470 for the reasons given below.

**BACKGROUND**

EISD filed a Form 470 on December 17, 2004.<sup>2</sup> As part of the Form 470, EISD was seeking Internal Connections and listed the website where potential service providers could find the District's RFP. After the allowable contract date, EISD selected Avnet as

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<sup>1</sup> 47 C.F.R. § 54.719(c).

<sup>2</sup> See Exhibit A -- EISD's Form 470 # 451400000524489 dated December 17, 2004.

their service provider for Internal Connections.<sup>3</sup> The Schools and Libraries Division (SLD) funded the Funding Year 2005 request for Internal Connections. This year for Funding Year 2006, EISD filed FRN 1395619 for the Basic Maintenance of the prior years Internal Connections request. On October 3, 2006, the SLD rejected EISD's FRN 1395619 for the following reason, "The FRN references services that require a posting of a 470 for each Funding Year".

### **DISCUSSION**

The SLD has rejected the EISD funding request due to the SLD's determination that there was not a valid multi-year contract in place. Without a multi-year contract, the SLD requires that a new Form 470 be posted each year. EISD would contend that they did have a valid multi-year contract in place with Avnet. The contract was a result of the Form 470 posted for Funding Year 2005 and resulted in a one year contract with 4 renewal options.<sup>4</sup> In the event the FCC determines there is not a valid multi-year contract in place which would cover Funding Year 2006, EISD would respectfully request the FCC waive the requirement that a new Form 470 should have been filed. EISD had a reasonable belief that a valid multi-year contract was in place.

#### ***A valid Multi-year contract existed***

EISD believes the contract signed with Avnet was a valid multi-year contract.<sup>5</sup> EISD intended to solicit and award a multi-year contract through the Form 470 process. To that end, the School District indicated on the Form 470 in Block 13 that "multi-year contracts are a consideration". EISD and Avnet signed a contract which included optional one year renewals for four more years.

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<sup>3</sup> The original contract was signed between EISD and Avnet. Later Avnet and Calence, LLC merged and a global SPIN change was done to change Avnet to Calence, LLC. For ease of following the provided Form 470 and signed contract, EISD will be referring to Avnet as the service provider instead of Calence, LLC.

<sup>4</sup> *Id.* at 1.3 Terms & Conditions, 1. Structure, b. which states, "This Agreement will commence on the date above and continue for a one year period. This Agreement may be renewed for up to four additional one (1) year terms upon mutual, written agreement of both parties...."

<sup>5</sup> See Exhibit B – Signed contract between Avnet and EISD dated 2/16/2005.

The SLD has created a difference between what they term a multi-year contract and a contract with voluntary extensions. Per the SLD website, “A multi-year contract means a contract that covers more than one year. For example, a three-year contract would expire at the end of the third year. A contract including voluntary extensions means that the contract expires at the end of its original term and may be voluntarily extended for one or more years pursuant to the provisions in the contract.”<sup>6</sup>

In the current case, the SLD has determined EISD did not create a multi-year contract. Instead the contract created and signed by EISD and Avnet was a contract with voluntary extensions. When each new funding year begins, the SLD requires applicants who signed contracts with voluntary extensions need to repost a Form 470 unless the applicant’s Item 13 on the Form 470 or the applicant’s RFP stated that the contract would include **voluntary extensions**. The SLD is now denying EISD funding because the Form 470 filed by EISD said “multiyear contracts” and did not mention voluntary extensions.

The District feels this distinction is unnecessary and serves no purpose in helping to ensure a fair and competitive bidding procedure. Any service provider who reviewed the Form 470 posted by EISD would have known the district was looking to enter into a contract covering multiple years. A multi-year contract and a contract with voluntary extensions are two different ways of asking for the same thing.

Also the contract provisions used by EISD and Avnet are designed to keep EISD in compliance with Texas state law.<sup>7</sup> In any multi-year contract EISD enters into, EISD

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<sup>6</sup> See the USAC website at Applicants Step 4: Contract Guidance, Multi-Year Contracts and Contracts Including Voluntary Extensions located at <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx>

<sup>7</sup> The relevant code section states in full:

§ 271.903. COMMITMENT OF CURRENT REVENUE.

(a) If a contract for the acquisition, including lease, of real or personal or property retains to the governing body of a local government the continuing right to terminate at the expiration of each budget period of the local government during the term of the contract, is conditioned on a best efforts attempt by the governing body to obtain and appropriate funds for payment of the contract, or contains both the

must retain the right to terminate at the end of each budget period in order to be in compliance with Texas state law. By reviewing and renewing the contract each year, EISD complies with Texas procurement laws. The review and renewal clause also assists the School Board in computing and maintaining the yearly budget for the district.

***The Form 470 filing requirement should be waived for Funding Year 2006***

The FCC may waive any provision of its rules on its own motion and for good cause shown.<sup>8</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>9</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>10</sup> In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>11</sup>

School districts are required by FCC rules to file a Form 470 in order to insure a fair and competitive bid process takes place.<sup>12</sup> In the current case, EISD filed their Form 470 for Funding Year 2005 and all the requirements for a fair and competitive process took place. The Form 470 EISD filed did state that multi-year contracts were a consideration in Block 13 of the Form 470. EISD also signed a contract with Avnet which contained a multi-year renewal option. As far as EISD knew, they were entering year two of what had the option to become a five year contract. There is nothing in the FCC regulations which defines what a multi-year contract is or that would prohibit a contract like the one EISD signed. EISD did nothing to create any waste, fraud or abuse to the E-rate

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continuing right to terminate and the best efforts conditions, the contract is a commitment of the local government's current revenues only.

(b) In this section, "local government" means a municipality, county, school district, special purpose district or authority, or other political subdivision of this state.

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>10</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

<sup>11</sup> *Northeast Cellular*, 897 F.2d at 1166.

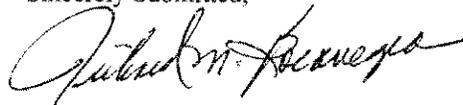
<sup>12</sup> 54 C.F.R. § 54.504

program. Instead, harshly enforcing the Form 470 rule will deny the school district close to two million in Basic Maintenance funding. The District would request that the FCC determine there is no difference between a multi-year contract and a contract with voluntary extensions. If the FCC determines EISD has a valid multi-year contract then per USAC rules, EISD would not be required to post a new Form 470. Per the USAC website, "A new Form 470 is **not required** if an applicant intends to seek discounts on services provided under a multi-year contract executed under a posted Form 470 in a prior funding year."<sup>13</sup>

**SUMMARY**

EISD respectfully requests the FCC to find that the School District was not required to file a new Form 470, or in the alternative to waive the requirement that the School District should have filed a new Form 470 for Funding Year 2006 since EISD could have reasonably assumed no new Form 470 was required.

Sincerely Submitted,



Richard Bocanegra  
Superintendent of Education  
Edgewood Independent School District  
5358 West Commerce Street  
San Antonio, TX 78237

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<sup>13</sup> See the USAC website at Applicants Step 3: Open a Competitive Bidding Process (Form 470) located at <http://www.universalservice.org/sl/applicants/step03/>

FCC Form

Approval by OMB  
3060-0806

**470** Schools and Libraries Universal  
Service  
Description of Services  
Requested  
and Certification Form

Form retrieved from SLD site:  
2004-12-17 16:20:33  
 Current status of form: CERTIFIED

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

**Block 1: Applicant Address and Identifications**

Form 470 Application Number: 451400000524489

Applicant's Form Identifier:

Application Status: COMPLETE

Posting Date: 12/17/2004

Allowable Contract Date: 01/14/2005

Certification Received Date:

**1. Name of Applicant:**

EDGEWOOD INDEP SCHOOL DISTRICT

**2. Funding Year:**

07/01/2005 - 06/30/2006

**3. Your Entity Number**

141553

**4a. Applicant's Street Address, P.O.Box, or Route Number**

5358 W COMMERCE ST

City

SAN ANTONIO

State

TX

Zip Code

78237-1354

**b. Telephone number**

(210) 433- 2361

**c. Fax number**

(210) 434- 9821

**d. E-mail Address**

**5. Type Of Applicant**

- Individual School (individual public or non-public school)
- School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools)
- Library (including library system, library branch, or library consortium applying as a library)
- Consortium (intermediate service agencies, states, state networks, special consortia)

**6a. Contact Person's Name:** J.J. McQuade

First, fill in every item of the Contact Person's information below that is different from Item 4, above

*Then check the box next to the preferred mode of contact. (At least one box **MUST** be checked.)*

**6b. Street Address, P.O.Box, or Route Number**

5358 W Commerce Street

City

San Antonio

State

TX

Zip Code

78237-1354

**6c. Telephone Number** (210) 444- 4500

**6d. Fax Number** (210) 444- 4525

**6e. E-mail Address** jmcquade@eisd.net

## Block 2: Summary Description of Needs or Services Requested

**7 This Form 470 describes (check all that apply):**

- a.  Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.
- b.  Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.
- c.  Services for which a new written contract is sought for the funding year in Item 2.
- d.  A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.

**NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.**

**What kinds of service are you seeking: Telecommunications Services, Internet Access, or Internal Connections? Refer to the Eligible Services List at [www.sl.universalservice.org](http://www.sl.universalservice.org) for examples. Check the relevant category or categories (8, 9, and/or 10 below), and answer the questions in each category you select.**

**8  Telecommunications Services**

**Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?**

a  **YES**, I have an RFP. It is available on the Web at <http://www.eisd.net/business/rfp> or via (check one):

the Contact Person in Item 6 or  the contact listed in Item 11.

b  **NO**, I do not have an RFP for these services.

**If you answered NO**, you must list below the Telecommunications Services you seek. Specify each **service or function** (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at [www.sl.universalservice.org](http://www.sl.universalservice.org) for examples of eligible Telecommunications Services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Add additional lines if needed.

**9  Internet Access**

**Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?**

a  **YES**, I have an RFP. It is available on the Web at <http://www.eisd.net/business/rfp> or via (check one):

the Contact Person in Item 6 or  the contact listed in Item 11.

b  **NO**, I do not have an RFP for these services.

If you answered **NO**, you must list below the Internet Access Services you seek. Specify each **service or function** (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at [www.sl.universalservice.org](http://www.sl.universalservice.org) for examples of eligible Internet Access services. Add additional lines if needed.

## 10 Internal Connections

*Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?*

a  **YES**, I have an RFP. It is available on the Web at <http://www.eisd.net/business/rfp> or via (check one):

the Contact Person in Item 6 or  the contact listed in Item 11.

b  **NO**, I do not have an RFP for these services.

If you answered **NO**, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., local area network) and quantity and/or capacity (e.g., connecting 10 rooms and 300 computers at 56kbps or better). See the Eligible Services List at [www.sl.universalservice.org](http://www.sl.universalservice.org) for examples of eligible Internal Connections services. Add additional lines if needed.

**11** (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name: **Robin Cook** Title: **Senior Systems Engineer**

Telephone number  
**(210) 444 - 7970**

Fax number  
**(210) 444 - 7969**

E-mail Address  
**rcook@eisd.net**

**12.**  Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or provide Web address where they are posted and a contact name and telephone number for service providers without Internet access.

**All questions must go through Purchasing Agent (J.J. McQuade)**

**13.** If you intend to enter into a multi-year contract based on this posting or a contract featuring an option for voluntary extensions you may provide that information below. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely timeframes).

**Multi-year contracts are a consideration.**

**Block 3: Technology Assessment**

- 14.  Basic telephone service only:** If your application is for basic local and long distance telephone service (wireline or wireless) only, check this box and skip to Item 16.
- 15.** Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.
- a.** Desktop software: Software required  has been purchased; and/or  is being sought.
- b.** Electrical systems:  adequate electrical capacity is in place or has already been arranged; and/or  upgrading for additional electrical capacity is being sought.
- c.** Computers: a sufficient quantity of computers  has been purchased; and/or  is being sought.
- d.** Computer hardware maintenance: adequate arrangements  have been made; and/or  are being sought.
- e.** Staff development:  all staff have had an appropriate level of training /additional training has already been scheduled; and/or  training is being sought.
- f.** Additional details: Use this space to provide additional details to help providers to identify the services you desire.

**Block 4: Recipients of Service****16. Eligible Entities That Will Receive Services:**

Check the ONE choice (a,b or c) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item 17 the entity/entities that will pay the bills for these services.

- a.**  Individual school or single-site library.
- b.**  Statewide application for (enter 2-letter state code) representing (check all that apply):
- All public schools/districts in the state:
  - All non-public schools in the state:
  - All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here.  **If checked, complete Item 18.**

- c.**  School district, library system, or consortium application to serve multiple eligible entities:

<b>Number of eligible sites</b>	<b>24</b>
<i>For these eligible sites, please provide the following</i>	
<b>Area Codes (list each unique area code)</b>	<b>Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces</b>
<b>210</b>	444
If your application includes INELIGIBLE entities, check here. <input type="checkbox"/> <b>If checked, complete Item 18.</b>	

**17. Billed Entities**

List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. Attach additional sheets if necessary.

Entity	Entity Number
EDGEWOOD INDEP SCHOOL DISTRICT	141553

**18. Ineligible Participating Entities**

Does your application also seek bids on services to entities that are not eligible for the Universal Service Program? If so, list those entities here (attach pages if needed):

Ineligible Participating Entity	Area Code	Prefix
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**Block 5: Certification and Signature**

**19. The applicant includes:(Check one or both)**

- a.  schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. Secs. 7801(18) and (38), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or
- b.  libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).

**20. All of the individual schools, libraries, and library consortia receiving services under this application are covered by:**

- a.  individual technology plans for using the services requested in the application, and/or

- b.  higher-level technology plans for using the services requested in the application, or  
c.  no technology plan needed; application requests basic local and/or long distance telephone service only.

**21. Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):**

- a.  technology plan(s) has/have been approved by a state or other authorized body.  
b.  technology plan(s) will be approved by a state or other authorized body.  
c.  no technology plan needed; application requests basic local and long distance telephone service only. .

22.  I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

23.  I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

24.  I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. Signature of authorized person:

26. Date (mm/dd/yyyy):

27. Printed name of authorized person: **Richard Bocanegra**

28. Title or position of authorized person: **Superintendent of Schools**

29a. Address of authorized person: **5358 W. Commerce St.**  
City: **San Antonio** State: **TX** Zip: **78237-1354**

29b. Telephone number of authorized person: **(210) 444 - 4500**

29c. Fax number of authorized person: **(210) 4444525**

29d. E-mail address number of authorized person: **rbocanegra@eisd.net**

**Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.**

**Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the "Service Provider Role in Assisting Customers" at [www.sl.universalservice.org/vendor/manual/chapter5.doc](http://www.sl.universalservice.org/vendor/manual/chapter5.doc) or call the Client Service Bureau at 1-888-203-8100.**

**NOTICE:** Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator, 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, information provided in or submitted with this form or in response to subsequent inquiries may also be subject to disclosure consistent with the Communications Act of 1934, FCC regulations, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

**SLD-Form 470  
P.O. Box 7026  
Lawrence, Kansas 66044-7026  
1-888-203-8100**

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:

**SLD-Form 470  
c/o Ms. Smith  
3833 Greenway Drive  
Lawrence, Kansas 66046  
1-888-203-8100**

FCC Form 470  
May 2003

'06 02/18 PM 18:27 FAX 210 644 4820 EDGWOOD ISD-PURCHASING

002/005



*Confidential*

# Proposal Acceptance

**Proposal Number:** EISD E-rate 8  
**Date:** February 16, 2005  
**Service Provider:** Avnet Enterprise Solutions  
**Client Name:** Edgewood ISD  
**Project Name:** Edgewood E-Rate Round 8 Network Maintenance RFP # 05-08

*By signing below, Edgewood ISD acknowledges:*

*Terms & Conditions set forth in attached Avnet Enterprise Solutions Customer Agreement*

**Offered by:**  
 Avnet Enterprise Solutions

**Accepted by:**  
 Edgewood ISD

**Signature** *[Signature]*  
**Name (Print)** Jim Teter  
**Title** President AES  
**Date** 2/18/05

**Signature** *[Signature]*  
**Name (Print)** IT McJANE  
**Title** DIRECTOR OF PURCHASING  
**Date** 2-16-05



1 Cisco	SmartNet EXXNED	\$	1,318,558.19
2 Avnet	Avnet-delivered maintenance with Help Desk	\$	934,294.95
Service Agreement Total			\$ 2,253,253.14



Confidential

### 1.3. Terms & Conditions

**AVNET ENTERPRISE SOLUTIONS CUSTOMER AGREEMENT**

This Agreement for the sale of goods and services is entered into on January 17, 2005 ("Effective Date"), between Avnet, Inc., by and through Avnet Enterprise Solutions, a division of Avnet, Inc., a New York corporation (collectively, "Avnet"), with offices at 8700 South Price Road, Tempe, Arizona 85284, and January 17, 2005, a corporation ("Customer"), with offices at 1158 W. Commerce Street San Antonio, Texas 78211 ("Customer").

**1. Structure**

a. This Agreement sets out general terms and conditions which govern the relationship between Avnet and Customer. Some Products and Services may require additional and/or unique terms, which are set out in Attachments, Exhibits, Statements of Work, and other various documents; this Agreement and the addenda referenced in section 1.c., below, are collectively referred to as the "Agreement".

b. This Agreement will commence on the date above and continue for a one year period. This Agreement may be renewed for up to four additional one (1) year terms upon mutual, written agreement of both parties at least (30) days prior to the end of the then-current term.

c. Third party terms and conditions, such as a manufacturer's warranty or shrink-wrapped software license, or a Service Provider's Statement of Work or terms and conditions, govern the relationship between the third party and Customer for a Product or Service (collectively "Third Party Terms").

d. Following are Other Documents and Third Party Terms attached to this Agreement on its Effective Date:

Document Name	Form No.	Date
Multi-Year Renewal Agreement	Addendum A	
Inventory List for Hardware Maintenance	Addendum B	
Annual Services Agreement	Addendum C	
Statement of Work	Addendum D	

**2. Prices**

a. Prices shall be specified by Avnet and shall be applicable for the period specified in Avnet's quote. If no period is specified, prices shall be applicable for thirty (30) days.

b. Prices are exclusive of taxes, impositions and other charges, including: sales, use, excise, value added and similar taxes or charges imposed by any government authority. If Avnet shall be liable for or shall pay any of the foregoing, same shall be paid by Customer to Avnet in addition to the price of the Products.

c. Shipping charges are not included in prices and will be invoiced, if applicable, as separate items. All shipments are F.O.B. point of origin.

**3. Orders**

a. Customer shall place an order by submitting it on Customer's standard purchase order form or on an alternate order form approved by Avnet, or otherwise by electronic means acceptable to Avnet. Customer's order shall be deemed to incorporate the terms and conditions of this Agreement without reference to the order to this Agreement. In no event shall preprinted terms and conditions on a Customer document (e.g., purchase order) modify or add to the terms of an order or this Agreement. Customer's order is subject to Avnet's credit and acceptance requirements. Customer's order that has been accepted by Avnet shall be referred to as an "Order." Avnet, as applicable, may accept an order by providing Customer a written confirmation of acceptance, sent by mail, facsimile or other electronic means; by shipping the Product; or by beginning performance of the Value-Added Work or Avnet Service. No Order for Standard Products may be cancelled or rescheduled without Avnet's written consent, which consent may be given by Avnet in its sole discretion.

b. Avnet will try to meet Customer's delivery requirements and will keep Customer informed of delivery status. Avnet will not be liable for delays in meeting delivery requirements.

c. Notwithstanding any provision of this Agreement to the contrary, orders for special, custom, value-added and other non-standard Products, including Products of manufacturers which do not appear on Avnet's line card, Products which have been tested, assembled or integrated for Customer, work-in-process and Products otherwise identified by Avnet as "NCR" or "Non-Cancellable and Non-Returnable" ("Non-Standard Products") shall be non-cancellable and non-returnable.

d. Risk of Loss/Title. Risk of loss and title shall pass to Customer upon delivery to a common carrier. Products invoiced and held by Avnet for any reason shall be held at Customer's risk and expense.

**4. Invoicing and Payment**

a. Customer will be invoiced for any "product" (hardware, software, documentation, accessories, materials, supplies and parts) upon delivery to a common carrier.

b. Customer will be invoiced for services delivered on a monthly basis or upon completion of mutually agreed upon milestones defined in the project plan. Invoicing details will be provided on the Work Approval Form, which Avnet requests customer sign to acknowledge the work performed.

c. Payment of the net amount of all invoices, without offset or deduction, is due 30 days from the date of Avnet's invoice. Additional payment terms may be set forth in Other Documents.

d. Checks are accepted subject to collection and the date of collection is deemed the date of payment. On any past due invoice, Customer shall pay interest from the payment due date to the date of payment at the annual percentage rate of 15% (or such lower rate as may be the maximum allowable by law), together with Avnet's costs of collection (including reasonable attorneys' fees).

e. Customer agrees that Avnet may, in its sole discretion, at any time, change the terms of Customer's credit, require payment in cash before shipment of any or all Products or before beginning any work on any Services and/or require prepayment.

**5. Avnet Services**

The following terms apply to Avnet Services:

a. Avnet Services. Avnet Services are services performed by Avnet that Avnet makes available to Customer. The service description and any additional terms and conditions for an Avnet Service may be contained in a Statement of Work. Customer agrees to provide Avnet with sufficient, free and safe access to the premises where Customer requires Avnet Services to be performed.

b. Statement of Work. A separate Statement of Work may be required for each Avnet service transaction. Customer's order for Avnet Services is subject to acceptance by Avnet. The Statement of Work may include, but may not be limited to (i) the service description; (ii) any additional terms and conditions for the Avnet Service; (iii) each party's responsibilities; (iv) the conditions that Avnet must meet to complete the Avnet Service ("Completion Requirements"); and (v) the charges, exclusive of taxes. Any changes to the Statement of Work must be in writing and signed by both parties.

c. Completion Requirements. Avnet may inform Customer when any Completion Requirements included in the Statement of Work have been met. Unless a different period is provided in the Statement of Work, Customer shall have 15 days to notify Avnet if Customer believes the Completion Requirements have not been met. The Avnet Services are complete when the Completion Requirements have been met.

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d. **Personnel.** Avnet and Customer shall each designate a project representative. All Avnet and Customer personnel assigned to participate on their behalf shall be knowledgeable in their assigned areas of responsibility. Unless otherwise provided in the Statement of Work, each party has the right to determine the assignment and re-assignment of its personnel. Avnet may subcontract Avnet Services to subcontractors selected by Avnet.

e. **Insurance.** Avnet and Customer, respectively, shall be responsible, at their own cost and expense, for maintaining in effect policy or policies of insurance insuring against claims, demands or actions arising out of or in relation to the Avnet Services provided pursuant to this Agreement, in an amount not less than \$500,000 in respect of injuries or death of any one person, \$1,000,000 in respect of any one accident or disaster, and in an amount not less than \$100,000 in respect of property damaged or destroyed. Such insurance shall be underwritten by companies qualified to do business in the state in which the Services are to be performed. Each party shall, upon the reasonable request of the other party, deliver a validly executed certificate of insurance evidencing the above.

#### 7. Avnet's Limited Warranty

a. **Avnet Services.** Avnet warrants Avnet Services shall conform to the Statement of Work for thirty (30) days from delivery. Avnet's liability for Avnet Services performed by it that are determined by Avnet not to satisfy this warranty shall be limited to correcting such Avnet Services at no charge to the Customer, or, at Avnet's election, refunding Customer's purchase price which is in Avnet's sole discretion, appropriately apportioned for Avnet Services.

b. **Resale of Services.** Avnet hereby transfers any transferable warranties from the applicable Service Providers. Avnet makes no independent warranty with respect to Services performed by a third party.

c. **Products and Value Added Services.** Avnet warrants to Customer that upon delivery to Customer, Products purchased hereunder will conform to the applicable manufacturer's specifications for such Products, and that any value-added work performed by Avnet on such Products at its integration facilities to assemble or integrate the Product ("Value-Added Work") will conform to applicable Customer's specifications relating to such work. Avnet makes no other warranty, express or implied, with respect to the Products. However, in addition to any warranty and indemnification provided to Customer directly by the manufacturer of the Products acquired hereunder, Avnet will transfer any transferable warranties and indemnities Avnet receives from the manufacturer of the Products, including any transferable warranty and indemnities respecting patent infringement. With respect to Products which do not meet applicable manufacturer's specifications and with respect to Value-Added Work by Avnet which does not meet applicable Customer's specifications, Avnet's liability is limited, at Avnet's election, to (1) refund of Customer's purchase price for such Products (without interest), (2) repair of such Products, or (3) replacement of such Products; provided, however, that such Products must be returned to Avnet, along with acceptable evidence of purchase, within thirty (30) days from date of delivery, transportation charges prepaid. Customer shall obtain a return material authorization number from Avnet prior to returning Product. Customer agrees that at Avnet's request it shall utilize the manufacturer's applicable warranty to correct a non-conformity in lieu of making a warranty claim under Avnet's warranty.

d. The warranties set forth in this section are the only warranties made by Avnet, and Avnet makes no other warranties, express or implied, with respect to the Products acquired and Services sold hereunder. **IN PARTICULAR, AVNET MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR SERVICES SOLD OR ACQUIRED HEREUNDER, OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR RESPECTING PROPRIETARY RIGHT INFRINGEMENT. AVNET DOES NOT AUTHORIZE ANY PERSON TO ASSUME FOR IT THE OBLIGATIONS CONTAINED HEREIN.**

#### 8. Limitation of Liability

a. Except for the remedies provided hereunder with respect to warranties provided by Avnet, Customer agrees that it will look solely to the manufacturer of the Products acquired pursuant hereto, or to the Service Providers, for relief with respect to any and all claims, actions, suits, proceedings, demands, liabilities, losses, damages and expenses (including attorneys' fees) resulting from any claim by Customer or any third party (including Customer's employees) arising out of or related in any way to the Products or Services or the use or operation thereof, whether such claim is brought in contract, warranty, tort or otherwise (collectively "Liabilities"). Customer will defend, indemnify and hold Avnet harmless from and against all such Liabilities.

b. **CUSTOMER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND AVNET SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL AND/OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF AVNET HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CUSTOMER'S RECOVERY FROM AVNET FOR ANY CLAIM EXCEED THE CHARGES FOR THE SERVICES RENDERED, OR THE PURCHASE PRICE OF ANY PRODUCTS ACQUIRED, PURSUANT HERETO, THAT ARE THE SUBJECT OF THE CLAIM WHETHER SUCH CLAIM IS BROUGHT IN CONTRACT, WARRANTY, TORT OR OTHERWISE. AVNET SHALL NOT BE LIABLE FOR AND CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD AVNET HARMLESS FROM ANY CLAIMS BASED ON AVNET'S COMPLIANCE WITH CUSTOMER'S DEBRONS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY PRODUCTS BY PARTIES OTHER THAN AVNET, OR USE IN COMBINATION WITH OTHER PRODUCTS.**

c. No action arising out of the performance of any Services, or the sale and acquisition of any Products, pursuant to this Agreement may be brought by either party more than two (2) years after such cause of action accrues, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

#### 9. Termination

a. Either party may terminate this Agreement without cause at any time by giving the other party at least thirty (30) days prior written notice.

b. Avnet may terminate any Order for default for which Customer refuses or is unable to accept delivery, or fails to make payment when due and does not make such payment within ten (10) days after notice from Avnet that payment is past due.

c. Either party may terminate this Agreement and any Order without notice if the other party is unable to pay its debts when due or becomes insolvent, files for bankruptcy or is the subject of involuntary bankruptcy, or has its assets assigned or a receiver appointed.

d. Either party may terminate any Order for which the other party fails to perform any of its obligations hereunder with respect to such Order so as to be in default and fails to cure such default within thirty (30) days after written notice thereof.

e. All Orders existing at the time of termination of this Agreement shall remain in effect and shall be performed in accordance with the terms of this Agreement, except Orders terminated in accordance with this Section. Customer shall pay for all Non-Standard Products ordered by Avnet for Customer's account and work in process (including charges for labor and materials) as of the effective date of termination of this Agreement or Order, as applicable.

f. The exercise of the right to terminate this Agreement and Order shall be in addition to any other right and remedy provided in this Agreement or existing at law or equity that is not otherwise excluded or limited under this Agreement.

10. **Intellectual Property.** If an Order includes software or other intellectual property, such software or other intellectual property is provided by Avnet to Customer subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or licenses to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement. Unless otherwise provided in this Agreement, Avnet is not the licensor and Customer acquires the license directly from the manufacturer or the manufacturer's authorized licensor.

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11. **Confidential Information.** Customer and Avnet agree that if confidential information is to be exchanged they may require that a mutually agreeable non disclosure agreement be signed. This Section does not obligate either party to accept confidential information from the other party.

12. **Non-Solicitation.** Customer agrees that the personnel of Avnet as well as the personnel of any Service Provider are critical to Avnet and the Service Provider's ability to provide services. Therefore, Customer agrees not to hire or otherwise solicit the employment of any Avnet or other Service Provider personnel associated with performing the Services or supplying the Products acquired hereunder during the term of this Agreement or for two (2) years thereafter. If Customer violates this prohibition, Customer shall immediately pay to Avnet an amount equal to the annual compensation of the Avnet personnel solicited or hired or the amount Avnet would then be liable to the Service Provider pursuant to any agreement with them.

13. **Independent Contractors.** Avnet, and each of the Service Providers, shall act as independent contractors. Neither party hereto shall represent that it has the authority, express or implied, to assume or create any obligation on behalf of the other party as agent or employee in any capacity. The parties agree that this Agreement does not establish a joint venture or partnership.

14. **Security Interest.** Avnet reserves a purchase money security interest in all Products purchased under this Agreement, all additions and accessories thereto and all replacements and proceeds thereof, to secure payment of Customer's obligations. Such security interest is retained until Customer's obligations are paid in full. Avnet may file this Agreement or financing statements pursuant to the Uniform Commercial Code or other applicable law to evidence or perfect Avnet's security interest in the Products. Customer hereby irrevocably appoints Avnet as its attorney-in-fact to execute such financing statements and to do such other acts and things as may be necessary to perfect or preserve Avnet's security interest in the Products. At Avnet's request, Customer shall join with Avnet in executing such financing statements. Customer shall pay all fees, taxes, and assessments associated with the filing of this Agreement or financing statements.

15. **Notices.** Any notice required or permitted to be sent to either party under the terms of this Agreement or any agreement entered into pursuant hereto shall be deemed to have been given when in writing and delivered personally or mailed postage prepaid by registered or certified mail, return receipt requested, to the party to be notified at the address set forth below or such other address as the party may from time to time designate in writing:

CUSTOMER:

Attention:

AVNET:

Avnet, Inc.

8700 South Price Road

Tempe, Arizona 85284

Attention: Legal Dept, Customer Contracts Mgr.

with a copy simultaneously to:

Avnet, Inc.

2211 South 47<sup>th</sup> Street

Phoenix, AZ 85034

Attention: Senior Vice President and General Counsel

16. **General**

a. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, proposals and communications between the parties, written or oral, relating to the subject matter of this Agreement. This Agreement may be modified only by writings duly signed by authorized representatives of both parties.

b. Neither party shall be liable for failure to fulfill its obligations under this Agreement or any other agreement entered into pursuant hereto, or for delays in delivery due to causes beyond its reasonable control, including but not limited to, acts of God, acts or omissions of the other party, acts or omissions of civil or military authority, government priorities, changes in law, man-made or natural disasters, materials shortage, fire, strike, floods, epidemics, quarantine regulations, riots, war, acts of terrorism, delays in transportation or inability to obtain labor or materials through its regular sources. The time for performance of any such obligation shall be extended for the time period lost by reason of the delay.

c. This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona.

d. Except as specifically provided herein, Customer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Avnet. Any such attempted assignment shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.

e. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to require performance at any time thereafter, nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of any provision itself.

f. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in such jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

g. The headings used in this Agreement are for convenience of reference only and shall be ignored in the construction and interpretation of this Agreement.

17. **Definitions**

All capitalized terms used in this Agreement have the meanings set forth below or in the Sections of this Agreement referred to below. Additional definitions may appear in Other Documents.

"Agreement" has the meaning specified in Section 1.a.

"Avnet" and "Avnet Enterprise Solutions" have the meaning specified in the first paragraph of this Agreement.

"Avnet Services" has the meaning specified in Section 7.a.

"Completion Requirements" has the meaning specified in Section 7.c.

"Customer" has the meaning specified in the first paragraph of this Agreement.

"Liabilities" has the meaning for Section 9.a. as specified in Section 9.a.

"Non-Standard Products" has the meaning specified in Section 3.a.

"Order" has the meaning specified in Section 3.a.

"Other Documents" has the meaning specified in Section 1.a.

"Product(s)" are hardware, software, documentation, accessories, cabling, material, supplies and parts.

"Services" means services performed by Avnet or Service Providers.

"Service Providers" means third parties that perform Services. Service Providers include manufacturers and non-manufacturers.

"Standard Products" means all Products that are not Non-Standard Products.

"Statement of Work" has the meaning specified in Section 7.b.

"Third Party Terms" has the meaning specified in Section 1.b.

"Value-Added Work" has the meaning specified in Section 8.a.

# Contract Response

## Avnet Enterprise Solutions Contract Response

### Edgewood Independent School District Request for Proposal #05-008

Avnet Enterprise Solutions, a division of Avnet, Inc. ("Avnet") is pleased to submit to Edgewood Independent School District ("District"), Avnet's Proposal ("Proposal") in response to the Request for Proposal #05-008. Avnet submits its Proposal subject to the terms, conditions, specifications, and bid sheets included with the RFP as responded to by Avnet in its Proposal and Avnet's Terms and Conditions included in this Proposal (collectively, "Proposal Terms") pursuant to the General Conditions and Specifications of the RFP. The Proposal Terms shall become the sole and exclusive terms and conditions of the final contract resulting from this RFP in the event the District accepts Avnet's Proposal by issuing a purchase order or other written form of acceptance without reaching any further mutual written agreement on terms and conditions. Avnet is willing to enter into good faith negotiations on terms and conditions at any time before the District may accept the Proposal Terms.

Following are Avnet's exceptions and clarifications to the RFP #05-008:

#### Section A -- 2.24 -- Provide Voicemail Maintenance Support

Exception: Avnet respectfully takes exception to the following provision: "Delivery: F.O.B. Destination, Freight Prepaid, San Antonio, Texas," and replaces it with the following language: "F.O.B. Origin."

#### Section C -- Contract Clauses

##### 2.k.

Exception: Avnet respectfully takes exception to this section 2.k. and requests its deletion.

##### 4. Indemnification

Exception: Avnet respectfully takes exception to this section and replaces it with the following language: "Avnet will indemnify and hold harmless the District from any and all claims for bodily injury, death or damage to tangible property caused by Avnet's negligence in the performance of any contractual obligations resulting from an order issued by the District and accepted by Avnet."

##### 5. Gratuities

Exception: Avnet respectfully takes exception to the last sentence of this section 5 and requests its deletion.

##### 6. Termination for Cause

Clarification: Either party may cancel the Agreement if the defaulting party fails to cure such default within 30 days after written notice thereof. Either party may terminate immediately without notice if the other party becomes insolvent or commits acts of bankruptcy.

##### 7. Termination Without Cause

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Clarification: Either party may terminate this Agreement without cause upon 30 days prior written notice to the other party.

#### 8. Force Majeure

Clarification: Neither party shall be liable for failure to fulfill its obligations under this Agreement for delays in delivery due to causes beyond its reasonable control. The time for performance of any such obligation shall be extended for the time period lost by reason of the delay, and 30 days prior written notice shall be provided before termination.

#### 9. Assignment - Delegation

Neither party shall assign or delegate an interest in this contract without the written permission of the other party.

#### 15. Venue

Clarification: Avnet agrees that venue for disputes arising out of this Agreement shall lie in Texas, however, venue shall not be limited to San Antonio or Bexar County.

#### 18. Title and Risk of Loss

Exception: Avnet respectfully takes exception to this section 18 and replaces it with the following language: "Title and Risk of Loss for products shall pass to the District upon delivery to a common carrier."

#### 19. Delivery Terms and Transportation Charges

Exception: Avnet respectfully takes exception to the following provision: "F.O.B. Destination, UNLOADED" and replaces it with "F.O.B. Origin."

#### 23.a. Warranty-Price

Clarification: The Agreement may be canceled for breach if the defaulting party fails to cure such default within 30 days after written notice thereof. The District shall render payment to Avnet for any goods and services rendered prior to termination.

#### 23.b.

Clarification: The District shall not have the right to deduct from the contract price or otherwise recover the full amount of commission, percentage, brokerage or contingent fee paid according to this provision.

#### 24. Warranty - Product

Clarification: Avnet is not the manufacturer of the products sold under this Agreement, however, the products will conform to the manufacturer's specifications.

#### 25. Safety Warranty

Clarification: Avnet is not the manufacturer of the products sold under this Agreement and can not, therefore, make these representations. However, the products will conform to the manufacturer's specifications.

#### 26. No Warranty by the District Against Infringements

Exception: Avnet respectfully takes exception to the first, third and fourth sentences of this section 26 and requests their deletion. Avnet is neither the manufacturer nor the licensor of the products sold under this Agreement. However, in addition to any warranty and indemnification provided to the District directly by the manufacturer of the products acquired hereunder, Avnet will transfer any

transferable warranties and indemnities Avnet receives from the manufacturer of the products, including any transferable warranty and indemnities respecting patent infringement.

**27. Right of Inspection**

Clarification: Title and Risk of Loss for products shall pass to the District upon delivery to a common carrier.

**31. Copyrights and Patents**

Exception: Avnet respectfully takes exception to this section 31 and requests its deletion.

**32. Retention of and Access to Records**

Clarification: Avnet shall keep accurate records in accordance with generally acceptable accounting principles of each product and service purchased by the District. For audit purposes the District shall only be entitled to examine records relevant for the purpose of verifying that Avnet has performed its obligations under the Agreement. Avnet shall make these records available for audit with a minimum of 15 days prior written notice, during regular business hours, at location where Avnet maintains relevant records.

**General Code of Ethics**

Clarification: Avnet will make a good faith effort to provide a safe working environment and engage in fair business dealings during the performance of this contract. However, Avnet can not make representations with respect to the self-discipline, desires or demeanor of its employees. Nor can Avnet make representations regarding the behavior of employees when they are not acting in the course of employment. For these reasons, Avnet can make no warranty with respect to sections C, E, F, H, and I. Avnet will avoid collusion with employees of the District.

**Section E -- Notices and Instructions**

**11.**

Exception: Avnet respectfully takes exception to this section 11 and replaces it with the following language: "All offers will be F.O.B. Origin."

**13.**

Clarification: Avnet is not the manufacturer of the products and, therefore, may not have knowledge of the materials used to manufacture them. However, products will conform to the manufacturer's specifications.

# EXHIBIT A

## Annual Services Agreement Edgewood ISD

### SCOPE OF WORK

This Agreement provides Help Desk Support and On Site Support (collectively, "Services") by Avnet Enterprise Solutions' National Customer Support Center (NCSC) for the covered equipment, cabling plant and software (collectively, Covered Equipment) as defined herein. The Services are intended to assist Customer's in house technical staff diagnosis and resolve problems with the Covered Equipment. Avnet Enterprise Solutions uses the Avnet Implementation of the Remedy<sup>®</sup> Total Call Management (TCM) service management software solution to manage service calls. Only Services provided hereunder which are authorized under the Schools and Libraries Division SLD guidelines are provided under this Agreement.

#### 1. Services

a. **Scope.** Help Desk Support and On Site Support are intended to answer operational and configuration questions, to determine if a problem exists with Covered Equipment, and to assist Customer to report such problems for correction to the service provider that is responsible for correcting the problem. These Services are not intended to include or replace such services provided by other service providers to isolate and repair equipment, cable and software failures, including but not limited to services provided under the manufacturer's warranty and support agreements.

#### b. Help Desk Support

Help Desk Support is provided during the hours of 7:00 a.m. to 7:00 p.m., Central Standard Time ("Help Desk Covered Hours"). Customer places its request for Help Desk Support by a telephone call to a toll free number or by sending an email to a designated email address, containing such information as Avnet Enterprise Solutions requires to open a service request.

An NCSC technician will respond to the service request within one-hour during Covered Hours. The NCSC technician will collect the service request profile information, which Customer shall provide, to include the on-site contact name and phone number, the make, model and serial number of the failing equipment, and a description of the problem, what functions were being performed at time of failure, description of any recent hardware or software changes, and other information as may be requested by Avnet Enterprise Solutions. The service request and any outage alerts are entered into Remedy for call response, tracking and closure.

If the NCSC technician determines that call escalation is required, a network engineer will be contacted to assist with the problem.

#### c. On Site Support

On Site Services are provided during the hours of 7:00 a.m. to 5:00 p.m., local time at the Customers' site ("On Site Covered Hours").

If a problem cannot be resolved remotely, a network engineer will be dispatched to arrive by the next business day after dispatch to provide on-site Services. In the event of an "Emergency," Avnet Enterprise Solutions will use its best efforts to provide on-site response as soon as possible. An "Emergency" means a critical system failure affecting all users in a facility or the entire school district.

Once on-site, the network engineer stays in contact with both the Customer user and the NCSC Help Desk allowing Avnet Enterprise Solutions to track the progress and problem resolution. During the call resolution process Customer can determine resolution status by contacting the Help Desk.

## 2. Covered Equipment

The list of Covered Equipment is intended to reflect the most recent update to the SLD's eligible services list. If the list of Covered Equipment differs from the most recent SLD list, then the most current SLD list shall take precedence. Only equipment, cabling plant and software purchased from Avnet Enterprise Solutions shall be part of the Covered Equipment.

### a. Covered Equipment:

#### Network Hardware:

- Routers - Includes upgrade components, however WAN components are not included.
- Switches - Includes upgrade components, however WAN components are not included.
- Hubs - Includes upgrade components, however WAN components are not included.
- DSU/CSU - Includes upgrade components, however WAN components are not included.

#### File Servers that are an integral part of the network:

- Domain Name Server
- DHCP Server
- E-mail Server
- Terminal Server
- Web Server (Must not be used for storage of end user files)

#### Network Operating Software:

- Software, or software upgrades, that would be essential to support the network operating system only. Application software, and any software for workstations/ desktops are not eligible. All software must be for servers or network hardware as listed above.

#### Cabling:

- LAN structured cabling plant, inclusive of all normal cabling/tie lines.

#### Other E-Rate Eligible Items

- UPS devices
- Equipment Cabinets
- Wireless LAN Equipment
- Firewall Equipment
- MCU devices
- Email Software
- Client Licenses for eligible software
- CODEC
- Voice Interface Cards
- Voice/Video over IP (partially eligible)
- Voice Mail

### b. Non Covered Equipment:

- WAN equipment and components
- Workstations/Desktops

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- Adds, Moves, Changes of Workstations/Desktops
- Any software, of any kind, that resides on Workstations/Desktops
- Any software, of any kind, that resides on Servers, and is not operating systems software.
- Telephone Handsets
- Fax Machines
- Answering Machines

### 3. Services Not Covered

The extent of Avnet Enterprise Solutions' Services provided hereunder is expressly stated in this Agreement. Any Service not specified herein is outside the scope of this Agreement, which includes, without limitation:

- Avnet Enterprise Solutions is not responsible for lost data or any associated costs or attempts to reconstruct data that may have been lost while performing services hereunder.
- Avnet Enterprise Solutions is not responsible for any lost application configurations or associated costs or attempts to reconstruct configurations that may have been lost while performing services hereunder.
  - This Agreement does not provide repair of equipment, software or cabling failure.
  - The Agreement does not provide user maintenance packs/kits, replacement parts, operating supplies or accessories including media such as tapes and disk packs.
  - Customer acknowledges that the ability of Avnet Enterprise Solutions to provide the Services contemplated under this Agreement requires that Customer provide Avnet Enterprise Solutions with all required information, cooperation and access to Customer's network. Avnet Enterprise Solutions shall not be obligated to provide or be liable for failure to provide the Services if Customer fails to honor such obligations or if undertaken by Avnet Enterprise Solutions in reliance upon incorrect information provided by Customer.

### 4. Total Hours

As provided in Exhibit B, Help Desk Support and On Site Support are limited to a maximum number of hours during the initial one year term of this Agreement ("Total Hours"). The Total Hours include all time providing Help Desk Support and On-Site Support, including round trip travel time. Any portion of the Total Hours not used prior to the end of the initial term of this Agreement shall expire and may not be carried over to any subsequent renewal or other contractual agreement.

**E-rate Yr 9 Infrastructure**

**Edgewood ISD continues in the existing multi-year network infrastructure basic maintenance agreement with Avnet Enterprise Solutions as documented in Year 8 Form 470 #45140000524489 and all associated contract documents.**

**PRICING**

<i>Fixed fee Help Desk Support and On Site Dispatch Support for a maximum of 2,792 Total Hours, as described in original Scope of Work.</i>	\$934,294.95
<i>Cisco Smartnet 8X5XNBD</i>	\$1,318,958.19
<b>TOTAL</b>	<b>\$2,253,253.14</b>

**Edgewood ISD**

Signature: John M. Walsh  
 Name: John M. Walsh  
 Date: 1-15-06

**Avnet**

Mike Bain  
MIKE BAIN  
1-15-06