

PURCHASING DEPARTMENT

REQUEST FOR PROPOSALS (RFP) #202021-002

Software Products and Services

**Issued by:
Sylvie Pouget**

Eanes Independent School District
Purchasing Department
601 Camp Craft Road
Austin, TX 78746
Phone: 512-732-9036

URL: <https://www.eanesisd.net/dept/purchasing>
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Submittal Deadline & Proposal Opening:

On a rolling basis through 2:00 PM April 30, 2021

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Items below represent components which comprise this bid/proposal package. Proposers are asked to review the package to ensure that all applicable parts are included. If any portion of the package is missing, please notify the Eanes ISD Purchasing Office by emailing purchasing@eanesisd.net immediately.

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PART 1.0 – NOTICE TO PROPOSERS

The Eanes Independent School District (“Eanes ISD,” “EISD,” or “District”) invites qualified entities and individuals to submit a Proposal for any software products and services that may be purchased by the District. This Request for Proposals (“RFP”) states the instructions for submitting Proposals, the specifications for the products and services, the procedure and criteria by which a vendor may be selected, and the contractual terms by which Eanes ISD intends to govern the relationship between itself and the selected vendor(s). The terms vendor and proposer may be used interchangeably throughout this RFP.

District Overview:

1. Eanes ISD covers an area of approximately 31.2 square miles and includes parts of Austin as well as the municipalities of Rollingwood and Westlake Hills.
2. A map of the District is available at the following District website address: <https://www.eanesisd.net/district/maps>
3. Eanes ISD currently has one (1) Adult Transition Services facility, one (1) high school, two (2) middle schools, and six (6) elementary schools, with a total student enrollment of approximately 8,064 and approximately 1165 employees.

1.1 Method of Delivery

This RFP can be reviewed and downloaded at the following website:

<https://www.eanesisd.net/dept/purchasing/bid>

If you are an interested entity or individual, the District invites you to submit a complete Proposal via email to the EISD Purchasing Office at purchasing@eanesisd.net with the following Subject Line: **RFP #202021-002 Software Products and Services**. Proposers are requested to submit a Proposal offering their total line of available products and services that are commonly purchased by government entities, school districts and other public, not-for-profit agencies and organizations.

Faxed or mailed proposals will NOT be accepted.

Proposals must be submitted using this RFP only. It is the responsibility of the proposer submitting a Proposal to make certain that the District Purchasing Division has the appropriate company name, authorized representatives, and contact information on file for the purpose of receiving notices, changes, addenda, or other critical information.

1.2 Proposal Due Date

This RFP will be open until **2:00 PM April 30, 2021**, and contracts may be awarded to multiple vendors on a rolling basis during the offering period. Vendors are encouraged to submit Proposals as soon as possible. As Proposals are received, they will be evaluated and either recommended for contract award or rejected by the District. Proposers will then be notified of the District’s

decision. Proposals selected for a contract award will be sent to the Eanes ISD Board of Trustees (“Board”) for approval every other month.

Proposals will be accepted through **2:00 PM April 30, 2021**. All Proposals must be received by the deadline. Proposals received after **2:00 PM April 30, 2021** will NOT be accepted or reviewed.

The District, at its discretion, reserves the right to re-advertise and/or extend the Proposal due date and time; any extensions will be indicated in the form of an addendum to the RFP.

Proposals must remain valid for a period of 90 days following the deadline for receipt of Proposals. Proposals submitted in response to this RFP will become irrevocable upon submission. Proposals may not be withdrawn or retracted for any reason for a period of ninety (90) days subsequent to the deadline for receipt of Proposals without the prior written consent of the Board, whether or not another Proposal has been accepted.

Once submitted, the District will not return Proposals to proposers.

1.3 Tax Exempt

Eanes ISD is exempt from federal excise tax, state, and local tax. Do not include tax in cost figures. Any taxes included in cost figures will not be included in the tabulation of any awards.

1.4 Disqualification

A proposer may be disqualified before or after the Proposals are opened for reasons as indicated in this RFP, as well as upon evidence of collusion with the intent to defraud or evidence of intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage.

1.5 Addendum/Vendor Clarification and Answers

No modification or amendment to this RFP shall be valid unless it is set forth in writing via a signed addendum or amendment from Eanes ISD. Responding proposers should periodically check the District’s website www.eanesisd.net/dept/purchasing/bid for any addenda or vendor clarifications and answers that may occur. Any interpretations, corrections, additions, or changes to this RFP will be communicated to proposers by the issuance of an addendum. It is the responsibility of the proposer, prior to submitting the Proposal, to determine whether any addenda were issued. All proposers shall comply with the requirements specified in any addendum issued by the District.

1.6 Award Decisions

This is a negotiated procurement and, as such, a contract award will not necessarily be made to the vendor submitting the lowest priced Proposal. Award(s) will be made to the vendor(s) submitting the best value Proposal(s) satisfying Eanes ISD’s requirements, price and other factors considered.

The District reserves the right to negotiate any terms, conditions, or pricing with one or more proposers prior to an award. The Board reserves the right to reject any or all Proposals, to award one or more contracts for individual or multiple services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interest of the District and obtain the overall best value for products and services.

Products and services considered for award shall equal or exceed the standards and specifications as defined within this RFP and further described in the scope and specification section.

1.7 Public Information

All Proposals become the property of Eanes ISD. As a governmental entity, the Texas Public Information Act applies to this RFP. Accepted Proposals and any subsequent award will generally be a public record, and Eanes ISD will comply with the Texas Public Information Act in the event the District receives an open records request for information relating to proposals submitted in response to this RFP. Proprietary information or material must be clearly marked as such on the face of each page containing any such information or material.

PART 2.0 – FORMATION OF OFFER

2.1 Offer to Contract

The District is conducting this procurement to establish one or more contracts. A response to this RFP is an offer to contract with the District based upon the terms, conditions, scope of services, and specifications contained in this request and in the Proposal.

2.2 Terms and Conditions

Submission of a Proposal shall be construed to mean that the Vendor agrees to carry out all of the requirements, terms, and conditions set forth in this RFP. Any proposed variation from or non-compliance with the stated requirements, terms, and conditions of this RFP shall be clearly stated in the Proposal in detail. If no variations are stated, Eanes ISD shall expect to receive the products and services exactly as specified.

2.3 Firm Pricing

Prices for all products and services shall be firm for the duration of any contract resulting from this procurement.

2.4 Board Approval

No contract will be executed until it has been reviewed and approved by the Board in a duly called and posted meeting of the Board, and a Proposal does not become a contract unless it is properly executed by the District in writing after approval by the Board.

2.5 Binding Contract

A contract or award letter for Software Products and Services may be executed with successful vendor(s) as a result of this process, and the successful vendor(s) agree(s) that fulfillment of the award under this RFP is conditioned on agreement to and compliance with the terms of this RFP and any subsequent written agreement or contract. Written notice of award properly executed by the District following Board approval and emailed or otherwise furnished to the successful vendor(s) results in a binding contract without further action by either party; however, Eanes ISD reserves the right to require execution of additional contract documents.

2.6 Contract Term

The Initial Term of the anticipated contract is a period of one (1) year plus any time required to implement and/or deploy the product and/or service, as determined by the District in its sole discretion. The District may elect to extend any contract awarded pursuant to this RFP for up to four (4) additional one-year terms (each, a “Renewal Term”). The duration of any contract

resulting from this procurement will run from the date of execution of the contract by the authorized representative of the District. Eanes ISD is not obligated to renew any contract for additional terms beyond the Initial Term. Notwithstanding the foregoing, to the extent that the resulting contract includes a perpetual license to any software or other intellectual property, the contract shall continue in full force and effect as to such software or other intellectual property until terminated in accordance with the terms thereof.

2.7 Contract Termination

The District will have the right to terminate any awarded contract with or without cause, and without penalty, as further set forth herein and in the resulting contract, if any.

2.8 Non-Exclusive Contract

The District intends to access any contract resulting from this RFP on an “as needed” basis from a list of contracts that have been competitively bid and awarded with qualified, high performance vendors based on the selection criteria set forth herein. Any contract resulting from this solicitation is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of the District.

2.9 IDIQ

The products and/or services to be purchased under the awarded contract, if any, may be of indefinite delivery and indefinite quantity (IDIQ).

PART 3.0 – PROPOSAL REQUIREMENTS

3.1 Tentative Timetable

The District anticipates following the timetable listed below for this procurement:

Item	Activity	Date & Time
1	Job starts to advertise (1 st run)	Wednesday August 19 th , 2020
2	Job advertised (2 nd run)	Wednesday August 26, 2020
3	Pre-Proposal Meeting	Not Applicable
4	Addenda (if any)	
5	Deadline for submission of proposals (<i>See Part 4 – Instructions to Proposers – for detailed submission requirements</i>)	2:00 PM April 30, 2021
6	Extended Deadline (if any)	None
7	Award Date	Every other month on a rolling basis

The table above is only an estimate and may vary.

3.2 Procurement Method

The District is utilizing the Request for Proposals (RFP) method of procurement in accordance with Texas Education Code Section 44.031(a)(3) Purchasing Contracts, a Request for Proposals for services other than construction services.

For information regarding the proposal process, contact Sylvie Pouget of the Purchasing Department at purchasing@eanesisd.net.

3.3 Vendor Applications

All new vendors doing business with the District must complete and submit a vendor application packet prior to a purchase order or check request. Submission of a vendor application does not guarantee an award or create an awarded status. Purchasing will evaluate your qualifications based on your response to each question. You will receive an email once your vendor application has been accepted or declined.

All vendor applications must be submitted via DocuSign. No vendor application packet email submissions will be accepted by the District. Vendor application packets can be found and completed for submission at www.eanesisd.net/dept/purchasing/vendor (Option 2).

3.4 Required Forms & Certifications

All proposers doing business with the District must complete and submit the following forms and certifications, as applicable:

1. EDGAR Vendor Certification
2. Conflict of Interest Questionnaire
3. Felony Conviction Notice
4. Data Protection Agreement
5. Certification Regarding Terrorist Organizations & Boycotting of Israel
6. Certificate of Insurance
7. W-9
8. Form 1295 Certificate of Interested Parties

These forms and required certifications can be found on pages 50-62 of the RFP packet.

* Compliance with Gov't Code 552.372: The requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code, Subchapter J, may apply to this RFP or contract if it is valued at more than \$1 million. The contractor or vendor agrees the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter, including the preservation of all "contracting information" (as defined in 552.003) and the provision, upon request of the governmental entity with whom you are contracting, of all contracting information. Contracting information includes, but is not limited to, records, communications and other documents related to the bid process, contract, payments, receipts, scope of work/services, and performance.

3.5 Pre-Proposal Conference – Not applicable to this procurement.

3.6 Rights Reserved by District & Restrictions on RFP Process

- a) The District reserves the right to cancel this solicitation in whole or in part by issuance of a revised or amended RFP.
- b) The District reserves the right to reject any or all Proposals, to award contracts as may appear advantageous to Eanes ISD, and to waive any formalities in the procurement process.
- c) The decision to award multiple contracts, award only one contract, or to make no awards rests solely with the District. The District may make multiple awards, and this fact should be taken into consideration by each proposer.
- d) The District assumes no financial responsibility for any costs incurred by prospective vendors in developing and submitting a Proposal or any amendments or addenda,

participating in bid conferences, participating in any negotiation sessions or discussions, or any other costs incurred by proposers prior to award of a contract pursuant to this RFP.

- e) The District reserves the right to have proposers participate in multiple interviews and/or set up a series of presentations with proposers.
- f) Any or all portions of this RFP and the vendor's Proposal may be incorporated into the final contractual agreement. Any negotiated agreements must ultimately be set forth in writing and properly executed by the District and the proposer.

3.7 Questions & Clarification

- a) Questions regarding the requirements specified in this solicitation must be sent via email to purchasing@eanesisd.net **no less than five (5) business days** before the Proposals are due. In the email subject line, type: Questions – RFP #202021-002 Software Products & Services.
- b) The District will not answer verbal questions, and oral answers provided by Eanes ISD or its agents shall not be binding. Questions submitted by prospective proposers and any responses prepared by Eanes ISD, along with any addenda to this RFP, if applicable, will be posted on the Eanes ISD website at www.eanesisd.net/dept/purchasing/bid.

PART 4.0 – INSTRUCTIONS TO PROPOSERS

This portion of the RFP includes instructions on the format proposers must follow in preparing and submitting their Proposals. To be considered, the Proposal must be prepared in the manner and detail specified in this RFP.

4.1 Compliance with Scope of Work & Specifications

Proposers are required to respond to all requests identified in this RFP. **By submitting a Proposal, each proposer represents that the proposer has read and understands the RFP, the District's contract, and the general terms and conditions, and the proposer is presumed to concur with all terms, conditions, and specifications therein, unless otherwise indicated in the Proposal in the precise manner described herein and in Part 10.** Any requested exceptions and/or substitutions to the RFP, the District's contract, or the general terms and conditions must be clearly defined and referenced to the proper Part and Section of this RFP in the proposer's Part 10 (vendor's exceptions and/or substitutions) response to this RFP. **Exceptions considered by Eanes ISD as too general, unreasonable, or affecting vital terms, or any language to the effect that the vendor does not consider this RFP to be part of a contractual obligation, may reduce or eliminate the vendor's prospects for award.**

4.2 Required Proposal Format and Content

All proposers are required to respond to this RFP by email submission. Proposals shall be submitted via email to purchasing@eanesisd.net and the Subject Line should read:
RFP #202021-002 Software Products & Services.

A signed, submitted Proposal constitutes an offer to perform work and/or deliver the products and services specified in the Proposal. To be eligible for consideration, complete Proposals, along with all required information, original signature pages, and required forms and certifications, must be received no later than **2:00 PM April 30, 2021.**

Eanes ISD expects vendors to be thoroughly familiar with all specifications and requirements of this RFP and any amendments and addenda. Vendor's failure or omission to examine any relevant form, article, site, or document will not relieve vendor from any obligation regarding this RFP.

Please ensure that you respond to all requirements and specifications in this RFP. All supplemental information and documents required by the RFP must be included with the Proposal. Proposal evaluation will be completed based on the information provided by Vendor. Failure to provide complete and accurate information may disqualify a vendor from consideration.

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of the RFP. Extensive promotional materials, etc. are not necessary or desired. Emphasis should be concentrated on conformance and clarity of content.

Proposals shall represent a true and correct statement and shall contain no cause for claim of omission or error. Request for withdrawal of a Proposal may be considered based on proof of mechanical error; however, the vendor may be removed from Eanes ISD's approved vendor list.

Proposals should include the following information and content:

- a) Title Page
- b) Business Identification
- c) Additional Requirements
- d) Compliance with Specifications
- e) Past Performance / Demonstrated Effectiveness
- f) Cost

The Proposal must be signed by an individual with proper authority. The signature should indicate the title or position that the individual holds in the entity (if applicable).

4.3 General Corporate and Contact Information

Proposers are required to include the following detailed information in their response to the District:

- Describe the company's official registered name and its principals.
- Provide a brief history of the company, including the year it was established.
- Provide the company's organizational chart.
- Provide the company's Dun & Bradstreet (D&B) number.
- Provide a description of the company's relevant market and the company's position within it.
- State whether the proposer or the proposer's ultimate parent company or majority owner: (A) has its principal place of business in this state; or (B) employs at least 500 persons in this state.
- Proposer agrees to provide the District with the following financial information if requested by the District at any point during the procurement process, including before or after contract award: If public, the proposer's income statement, balance sheet, and cash flow for the past three (3) years; if private, the proposer's audited financial statements for the past two years or an acceptable equivalent (as determined by the District). A proposer's failure to provide this financial information may impact the District Administration's recommendation to the Board for the award of the contract.

4.4 References

Proposers must provide at least three references of governmental entities (school districts preferred) that have purchased software products, services, and/or related items from the proposer in the last 3-4 years. References are to be included in Proposal submissions. Please use the

following format for all references:

- Company Name
- Address
- Contact Name
- Phone Number
- Email

4.5 Proof of Insurance

Proposers must provide proof of insurance providing coverage for general liability and worker's compensation in accordance with the District's insurance requirements. The successful vendor must be able to name the District as an additional insured.

4.6 Third Parties & Subcontractors

If all or a portion of services will not be self-performed, Proposers must include information on any subcontractors who will provide any products or perform any of the desired scope of services and specifications.

4.7 Product & Service Pricing

Proposers must provide a detailed cost breakdown of all software product and service offerings, including all proposed fees and reimbursable expenses for the entire potential contract term, including any prospective renewal periods. Vendor shall provide detailed information on any costs that Eanes ISD may incur related to the requested products and services. Vendor must specify all costs (i.e., maintenance fees, hosting fees, professional services fees, administrative fees, processing fees, travel fees, etc.) associated with providing the products and services requested herein. Vendor will provide a complete fee and cost detail supporting all elements of its Proposal. The cost detail must include a narrative for each fee or cost element. If Vendor does not expect Eanes ISD to incur any costs for any portion of the Proposal, the proposer shall state "No costs to Eanes ISD" with respect to any such portion of the Proposal.

4.8 Non-Collusion, Undue Influence, and Gratuities

Proposers are required to certify a Non-Collusive Statement. By submitting a Proposal, proposers represent that such Proposal or bid is genuine and not collusive or sham; that proposer has not colluded, conspired, connived or agreed, directly or indirectly, with an entity or person, to put in a sham proposal or bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the Proposal price or of any other proposer, or to fix any overhead, profit or cost element of said Proposal price, or of that of any other proposer, or to secure any advantage against the District or any person interested in the proposed contract, and that all statements in said Proposal or bid are true.

In order to ensure the integrity of the selection process, Vendor's officers, employees, agents, or other representatives shall not lobby or attempt to influence a vote or recommendation related to Vendor's Proposal, directly or indirectly, through any contact with Eanes ISD board members or other school officials from the date this RFP is released until the award of a contract by Eanes ISD. By signing its Proposal, Vendor affirms that Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to any Eanes ISD representative in connection with the Proposal submitted.

Eanes ISD may, by written notice to Vendor, cancel any contract without liability to Vendor if it is determined by Eanes ISD that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Vendor, or any agent or representative of Vendor, to any officer or employee of Eanes ISD with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such a contract. In the event the contract is cancelled by Eanes ISD pursuant to this provision, Eanes ISD shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Vendor in providing such gratuities.

4.9 Use of Brand Names; Similar Products

The use of brand and manufacturer's names, if any, is for the purpose of brevity in establishing type and quality of merchandise and is not restrictive. Whenever an article or material is defined by the District in this solicitation by describing a proprietary product or by using the name of a manufacturer or brand name, the term "or equal" if not inserted shall be implied (as applicable). The specified article or material shall be understood as indicating type, function, minimum standard of design, efficiency, and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design, and efficiency (as applicable). Manufacturer, trade, and/or brand name must be indicated in the Proposal for each article and, when omitted, Eanes ISD will consider the product bid to be as specified in the RFP. Illustrations and complete descriptions must be included with the Proposal if bidding other than specified.

4.10 Sole Source

In order to become a Sole Source Vendor, a proposer must meet the requirements of Texas Education Code § 44.031(j) Sole Source.

It is incumbent upon the District to obtain and retain documents from the proposer which clearly delineate the reasons that qualify the purchase to be made on a sole source basis. In order to do business with the District as a Sole Source Vendor, the District must receive a notarized Sole Source Affidavit along with proof of your company qualifying as a sole source.

The District reserves the right to determine, in its sole discretion, if your company is a qualified Sole Source Vendor. Please note that the existence of a copyright, alone, does not determine whether a product, service, or vendor qualifies as sole source.

PART 5.0 – SCOPE OF WORK & SPECIFICATIONS

It is the intention of the District to establish one or more contract(s) with highly qualified vendor(s) for the purchase of software products and services. Vendor(s) shall, at the request of the District, provide these products and/or services under the terms of this RFP and the contract set forth in Part 8.

The District invites qualified entities to submit a Proposal for their total line of available software products and services that are commonly purchased by school districts, governmental entities, and other public, not-for-profit agencies and organizations, including, but not limited to, educational, business, operations, human resources, and financial software, whether on-premise or Software as a Service, software-related professional services, such as implementation, configuration, customization, data conversion and migration, system and acceptance testing, and training services, maintenance and support services, hosting services, and any other software products and services that may be purchased by the District. Software may consist of individual products, tool kits, modules, and/or an entire system for a fully functional solution. Software licensing types may include, but are not limited to, individual, machine, volume, or enterprise licensing, and the license term may be perpetual or on a renewal or subscription basis.

The RFP response must provide the District with specific knowledge of products and services to be provided and implementation methods to be used by the proposing entity.

The RFP response must include a proposed implementation plan and timeline, including both District and Vendor man-hours and other resources needed to provide all services and products offered, including an estimate for each step of product or service implementation and individuals assigned to perform those services, as well as all hardware and other technology that is required to be vendor-provided and/or separately purchased by the District.

All systems or modules must meet the following minimum compatibility requirements:

Compatible with all currently supported Windows, Linux and/or Apple based OS systems by those respective companies' developers end-of-life and end-of-support listings/standards, browsers using up-to-date versions for aforementioned systems and firewall and/or browser security and encryption standards. Allows for the district's use of SSL decryption where needed for security purposes or ensures security coverage on connections that cannot allow for SSL decryption according to the companies' agreement with Eanes ISD regarding data privacy. Does not require older, out-of-date and/or unsupported browsers, plug-ins or software(s) that no longer receive security or functionality updates to operate

If you are providing a Software as a Service or other hosted solution, please explain how your company provides the following basic requirements. Please indicate whether these requirements are currently satisfied in the solution, whether a modification within the solution would be needed to satisfy the requirement, or whether the solution will not satisfy the requirement:

1. Data hosted off site is accessible 99.5% including all planned and unplanned downtime. Planned downtime must be coordinated.
2. All data is backed up every 24 hours at vendor's site. Backup information will be stored in a different location from the data center where the hosting servers are located. If restoration of data is required, can the vendor upon notification restore the data within one business day?
3. The District is involved in and informed of any operational changes made that affect access to the data. That includes but is not limited to:
 - a. Migration, upgrades, or other changes to the server that require downtime or a server reboot must be coordinated at least 10 working days in advance. Security patches and other emergency requirements can be coordinated with less notice but a designated District representative must be contacted prior to rebooting the server.
 - b. A designated District representative must be notified within 30 minutes of an unplanned outage and must be given an estimated recovery time or hourly status updates until the recovery time is known.
 - c. Is there a customized error page (other than the standard page cannot be found 404 error) during outages (planned or otherwise)? Is prior notice included on the page to visitors of planned outages?
4. Can District Data under the protection of the vendor (under its care, custody and control) be returned to the District upon notice, with the data/ metadata transferred in Comma Separated Value (CSV) file format that can be recovered for use within an Oracle or SQL database environment?
5. Is the SaaS or other hosted solution available and accessible to all users 24 hours a day, 7 days a week, except for prescheduled maintenance periods?
6. Data protection controls comply with FERPA, COPPA, PPRA, Texas Education Code Chapter 32, and all other Federal and Texas privacy statutes as these laws and regulations apply to the contracted services.

PART 6.0 – FINANCIAL OFFER & PRICING

Proposers must respond to all questions and identify all costs, fees, or charges for which the District may be billed under this RFP for software products and services offered by the proposer. Costs not indicated in Proposals will not be paid.

Proposer's must also be able to demonstrate in its Proposal, and throughout the life of any resulting contract, that costs associated with the products and services under this RFP are consistently aggressive for the duration of the resulting contract for all provided software products and services.

The District prefers that all costs for software services and products offered under this RFP are broken down by category to indicate unit costs as well as total costs for software products and services. The Proposal shall also clearly specify all costs as either one-time or recurring and identify whether any discounts are offered and the terms of such discounts. This information, as defined by the proposer, will become part of the evaluation process in determining the best value for the District.

PART 7.0 – EVALUATION & AWARD OF PROPOSALS

In accordance with applicable laws, rules, and regulations for public purchasing, award(s) will be made to the responsible proposer(s) whose Proposal(s) is/are determined, after evaluation by the District, to be the best value to the District. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this RFP document.

10.1 Evaluation Criteria

The District will review and evaluate all Proposals and make a recommendation to the District's Board of Trustees. Eanes ISD may use Eanes ISD staff, independent evaluators, or a combination of both to evaluate and rank Proposals. The committee evaluating the Proposals submitted in response to this RFP may require any or all Vendors to give an oral presentation to clarify or elaborate on their Proposal, as well as to provide a demonstration. Upon completion of oral presentations or discussions, Vendors may be requested to revise any or all portions of their Proposals.

The District will base a recommendation for contract award on the following factors, in accordance with Texas Education Code § 44.031.

- | | |
|--|-----------|
| 1. Price | 15 Points |
| 2. Reputation of Vendor and of Vendor's goods and/or services
(Including references, experience, and Vendor's past relationship, if any, with other schools) | 15 Points |
| 3. Quality of Vendor's goods and/or services
(Including personnel qualifications) | 20 Points |
| 4. Extent to which the goods and/or services meet District's needs
(Including ability to meet specifications, responsiveness to the RFP, and Vendor's service and delivery capabilities) | 20 Points |
| 5. Vendor's past relationship with District | 5 Points |
| 6. Impact on the ability of District to comply with laws and rules relating to HUBs | 5 Points |
| 7. Total long-term cost to District to acquire Vendor's goods and/or services | 15 Points |
| 8. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the | 5 Points |

Vendor or the Vendor's ultimate parent company or majority owner:

- (A) has its principal place of business in this state; or
- (B) employs at least 500 persons in this state

Total:

100 Points

Proposals that contain false or misleading statements, or that provide references that do not support an attribute or capability of the proposed product or service, may be rejected. If, in the opinion of Eanes ISD, such information was intended to mislead Eanes ISD in its evaluation of the Proposal and the attribute, condition, or capability as a requirement of the RFP, the Proposal may be disqualified.

10.2 Competitive Range

It may be necessary for the District to establish a competitive range of acceptable proposals as part of the evaluation process. Proposals not in the competitive range are unacceptable and do not receive further award consideration.

NOTE: After evaluation, any Proposal with a total score less than 70 points will be considered as nonresponsive and will be disqualified from further consideration. Proposals receiving a final score of 70 or better are not guaranteed an award. Eanes ISD reserves the right to request Best and Final Offers (BAFO) from all responsive Vendors.

10.3 Awards

Eanes ISD may award this RFP to multiple Vendors or to one Vendor, as Eanes ISD determines, in its sole discretion, provides the best value to Eanes ISD, based upon the evaluation of Proposals. Thus, the result will not be determined by price alone, but upon the applicable criteria set forth in this RFP.

In the event that one Vendor cannot meet all of the requirements outlined in the RFP, the award may be divided among several qualified Vendors. After evaluation, an award may be made on the basis of the evaluation and ranking, without discussion, clarification, or modification, or Eanes ISD may enter into negotiations with the highest ranked Vendors.

Awards may be made to the successful proposer(s) for the total line of products and services submitted.

Eanes ISD reserves the right to select any offer it deems the best value, regardless of price, and to accept multiple offers for the same services.

10.4 Inspection & Acceptance

Awarded vendor(s) shall deliver the goods or services procured under this RFP to the District after proper issuance and receipt of a Purchase Order. If delivery is not or cannot be made within proper time period, the awarded vendor must receive authorization from the District for the delayed delivery. If defective or incorrect goods are delivered, the District may make the determination, in its sole discretion, to return the goods to the vendor at no cost to the District. The vendor agrees to pay all shipping and handling costs for any such return shipment, if any. The vendor also shall be responsible for arranging the return of the defective or incorrect goods.

PART 8.0 – EISD CONTRACT

EISD SOFTWARE AGREEMENT

EALES INDEPENDENT SCHOOL DISTRICT (hereafter, "EISD") and _____
(hereafter, "Vendor") hereby enter into this Software Agreement (hereafter, "Agreement") on the following terms:

1. **Agreement Documents:** The term "Agreement" as used herein shall include the following Agreement Documents, which are incorporated herein by reference for all purposes, and in the event of a conflict or inconsistency, the Agreement Documents shall be given precedence as follows:
 - a. The body of this EISD Software Agreement;
 - b. The attached Data Protection Addendum ("DPA");
 - c. Exhibit A – [*Pricing Schedule*];
 - d. Exhibit B – [*Service Schedule/Scope of Work/Description/Specifications*];
 - e. Exhibit C – [*Support and Service Level Agreement*];
 - f. Exhibit D – [*Vendor's End User License Agreement or other terms and conditions*];
 - g. [*Applicable District RFP Document*]; and
 - h. Vendor's proposal submitted in response to [*Applicable District RFP Document*].

During the course of providing Services, should any conflict be identified between, among, or in the Agreement Documents that cannot be resolved by the order of precedence set forth above, the Vendor shall be deemed to have agreed to the lowest pricing, the greater quantity or better quality of the Services, or the requirement most favorable to EISD.
2. **Services:** Vendor shall provide the products and services set forth in Exhibit A and further described in Exhibits B and C (collectively, "Services"). Any software included in the Services is referred to herein as "Software." Upon delivery of the Software to EISD, Vendor shall also deliver copies of Vendor's standard user manuals, training materials, job aids, and other Vendor-provided documentation and materials (collectively, "Documentation"), which shall be subject to the terms of this Agreement. Vendor shall promptly provide maintenance and support services, including telephone and email support, bug fixes, and updates and upgrades to the Software in accordance with Exhibit C. Upon delivery to EISD, any updates or upgrades to the Software shall become part of the Software and will be subject to the terms of this Agreement.
3. **Term of Agreement:** The initial term of this Agreement is for a period of one (1) year [*add implementation/deployment time, if applicable*], beginning on _____ and ending on _____ ("Initial Term") unless terminated earlier pursuant to the terms of this Agreement, with EISD having the option to renew this Agreement for up to _____ additional years in _____ [*month/year*] increments (each, a "Renewal Term") by providing written notice of renewal to Vendor at least thirty (30) days prior to the expiration of the then-current Term. Notwithstanding the foregoing, to the extent that this Agreement includes a perpetual license to any Software or other intellectual property, this Agreement shall continue in full force and effect as to such Software or other intellectual property until terminated in accordance with the terms hereof. The phrase "Term" in this Agreement shall mean the then-current Term of the Agreement, whether the Initial Term or a Renewal Term, if any.
4. **Reservation of Rights; Grant of License:** Except as otherwise provided in this Agreement, as between Vendor and EISD, all right, title, and interest, including all intellectual property rights, in and to the Software and Documentation shall remain the sole and exclusive property of Vendor, and Vendor hereby grants EISD a nonexclusive license, as further detailed in Exhibit D, to access and use the Software and Documentation for the purposes and business of EISD during the Term of this Agreement. Vendor further grants EISD a nonexclusive license to reproduce, distribute, and use copies of the Documentation for EISD's internal business and educational purposes during the Term of this Agreement.
5. **EISD Resources:** During the Term of this Agreement, EISD agrees to provide access to EISD staff, facilities, systems, and data to Vendor to the extent reasonably necessary for Vendor's performance of the Services.

6. **Use Restrictions:** Except as otherwise expressly stated in this Agreement or required by law, EISD will comply with Vendor's reasonable use restrictions regarding the Software as set forth in Exhibit D; provided that any additional charges imposed upon EISD, any modification(s) to the Services, and any imposition of liability upon EISD or limitation of EISD's rights or remedies (including any mediation or arbitration requirements) under Exhibit D or any documents referenced therein, or any amendment(s) thereto, shall be ineffective unless reproduced in the body of this EISD Software Agreement. EISD shall also use reasonable efforts, including enforcement of EISD's acceptable use policies and the like, to ensure EISD end users' compliance with such restrictions; provided that nothing in this Agreement shall be construed as requiring EISD to assume liability for the acts or omissions of any third party, including EISD trustees, officers, employees, contractors, students, and other affiliates or end users.
7. **Acceptance Criteria:** EISD will not be deemed to have accepted any Services provided hereunder until such Services have been delivered to EISD in strict accordance with the requirements of this Agreement and a duly authorized employee of EISD indicates acceptance of such Services in writing.
8. **Compensation:** Vendor agrees to provide the Services, upon the terms and conditions set forth in this Agreement, for the compensation set forth in Exhibit A, up to a maximum contract amount not to exceed \$_____ without a valid amendment to this Agreement, including any required approvals by EISD's administration and Board of Trustees. The compensation set forth herein is all-inclusive; no additional payment or reimbursement will be made. Vendor shall be solely responsible for any and all travel and other business or miscellaneous expenses incurred by Vendor in rendering the Services.
9. **Payment Terms:** All prices shall be F.O.B. destination. The prices set forth in Exhibit A shall not be subject to increase during the first ____ years of this Agreement. If Vendor intends to increase the prices set forth in Exhibit A for any Renewal Term(s) following the first ____ years of this Agreement, Vendor shall provide written notice to EISD of any such increase at least ninety (90) days prior to the commencement of the affected Renewal Term(s), and if EISD chooses to proceed with the renewal, the mutually agreed prices for the affected Renewal Term(s) shall be memorialized in a properly executed amendment to this Agreement. Vendor may invoice EISD for Services only after such Services have been provided and duly accepted by EISD, except that Vendor may invoice EISD for Software licensing or subscription fees upon the commencement of the applicable Software license or subscription term to the extent expressly agreed in Exhibit A. Before invoicing EISD for Services, Vendor will complete and submit an Internal Revenue Service ("IRS") Form W-9. Vendor shall submit detailed, itemized invoices for Services provided to EISD at the intervals agreed in Exhibit A describing the Services rendered, the dates and times when such Services were performed, and the amount due. Payment for undisputed invoices will be made by EISD within forty-five (45) days after receipt of invoice. Nothing in this Agreement or any action or inaction by EISD, including EISD's payment for Services, shall constitute a waiver by EISD of any billing dispute in connection with the Services.

EISD is tax-exempt and shall provide proof of such status to Vendor upon reasonable request. EISD shall not be liable for any taxes in connection with this Agreement, except where otherwise required by law. Vendor shall be solely responsible for any and all applicable social security and personal income taxes and any taxes or fees measured by or imposed upon Vendor's income which may become due as a result of any payments made by EISD hereunder, and Vendor shall indemnify and hold EISD harmless in this regard.

In the event that this Agreement is terminated prior to the end of the applicable Term, payments will only be made to the extent that Services have been performed and delivered satisfactorily to EISD in accordance with the requirements of this Agreement prior to termination and are undisputed.

10. **Change Orders:** Subject to *[Applicable District RFP Document]*, any necessary approvals by EISD's administration and Board of Trustees, and applicable law, the parties may agree to modify the scope of Services under this Agreement. EISD may request that Vendor modify the Services by submitting a written proposed change order to Vendor. Vendor shall negotiate in good faith regarding change order pricing, and such pricing shall not exceed the rates set forth in Exhibit A and Vendor's proposal submitted in response to *[Applicable District RFP Document]*. Such change order will become part of this Agreement only if memorialized in a valid amendment to this Agreement in accordance with Section 37, below. If Vendor

acts on the direction of an EISD employee that is not authorized to make changes or otherwise modifies the scope of Services without a valid amendment to this Agreement, Vendor does so at its own risk or peril and risks termination of this Agreement for cause.

11. **Intellectual Property:** Vendor represents and warrants that it has all necessary rights, title, and interest in any intellectual property to be provided or otherwise made available to EISD as set forth in this Agreement. In the event of a breach of the foregoing warranty, without limiting any rights or remedies of EISD under this Agreement or applicable law, Vendor, at its own expense, shall, as reasonably agreed by the parties, promptly: (1) secure for EISD the right to continue using such intellectual property; (2) replace or modify such intellectual property to make it noninfringing, provided such replacement or modification shall not materially diminish the Services as required under this Agreement; or (3) terminate this Agreement, in whole or in part, and refund to EISD an equitable portion of any fees, including, but not limited to, any license, subscription, hosting, and maintenance fees, paid by EISD for the affected Services.
12. **VENDOR'S REPRESENTATIONS AND WARRANTIES: IF VENDOR IS A BUSINESS ENTITY, IT REPRESENTS THAT: (I) IT IS DULY ORGANIZED, VALIDLY EXISTING AND IN GOOD STANDING UNDER THE LAWS OF THE STATE OF ITS ORGANIZATION; (II) IT IS AUTHORIZED AND IN GOOD STANDING TO CONDUCT BUSINESS IN THE STATE OF TEXAS; (III) IT HAS ALL NECESSARY POWER AND HAS RECEIVED ALL NECESSARY APPROVALS TO EXECUTE AND PERFORM ITS OBLIGATIONS IN THIS AGREEMENT; AND (IV) THE INDIVIDUAL EXECUTING THIS AGREEMENT ON BEHALF OF VENDOR IS AUTHORIZED TO DO SO.**

VENDOR WARRANTS THAT ALL GOODS AND SERVICES FURNISHED UNDER THIS AGREEMENT WILL CONFORM IN ALL RESPECTS TO THE TERMS OF THIS AGREEMENT, INCLUDING ANY SPECIFICATIONS, STANDARDS, AND DOCUMENTATION INCORPORATED HEREIN, INCLUDING, WITHOUT LIMITATION, THOSE DETAILED IN [APPLICABLE DISTRICT RFP DOCUMENT].

VENDOR WARRANTS THAT ALL GOODS PROVIDED BY VENDOR UNDER THIS AGREEMENT WILL BE FREE FROM DEFECTS IN MATERIAL, WORKMANSHIP, AND DESIGN FOR THE LONGER OF ONE (1) YEAR FOLLOWING EISD'S ACCEPTANCE OF SUCH GOODS OR THE APPLICABLE WARRANTY PERIOD OTHERWISE SET FORTH IN THIS AGREEMENT. VENDOR WARRANTS THAT ALL GOODS PROVIDED BY VENDOR UNDER THIS AGREEMENT ARE SUITABLE FOR AND WILL PERFORM IN ACCORDANCE WITH THE PURPOSES FOR WHICH THEY ARE INTENDED.

VENDOR FURTHER WARRANTS THAT, DURING THE TERM OF THIS AGREEMENT, ANY SOFTWARE PROVIDED BY VENDOR HEREUNDER WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE SPECIFICATIONS SET FORTH IN VENDOR'S PROPOSAL SUBMITTED IN RESPONSE TO [APPLICABLE DISTRICT RFP DOCUMENT] AND ANY SPECIFICATIONS OR OTHER DOCUMENTATION PROVIDED TO EISD BY VENDOR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES.

VENDOR WARRANTS THAT ANY PROFESSIONAL SERVICES OR OTHER WORK PERFORMED BY VENDOR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES WILL BE PERFORMED USING COMMERCIALY REASONABLE SKILL AND CARE, AND BE OF A PROFESSIONAL QUALITY CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS AND PRACTICES.

TO THE EXTENT THAT THE SERVICES INCLUDE ANY THIRD-PARTY GOODS OR SERVICES, IN ADDITION TO VENDOR'S WARRANTIES HEREINDER, VENDOR HEREBY TRANSFERS TO EISD, TO THE EXTENT TRANSFERABLE, WHATEVER WARRANTIES AND INDEMNITIES VENDOR RECEIVES FROM THE MANUFACTURER, PRODUCER, OR OTHER PROVIDER OF ANY SUCH GOODS OR SERVICES, INCLUDING ANY TRANSFERABLE WARRANTIES AND INDEMNITIES RESPECTING INFRINGEMENT.

VENDOR AGREES TO TAKE COMMERCIALLY REASONABLE ACTION TO ASSIST EISD IN PURSUING ANY AVAILABLE REMEDIES UNDER OR OTHERWISE ENFORCING ANY SUCH WARRANTIES AND INDEMNITIES.

WITHOUT LIMITING ANY REMEDIES OTHERWISE AVAILABLE TO EISD UNDER THIS AGREEMENT OR APPLICABLE LAW, IF ANY SERVICES DO NOT CONFORM TO THE REQUIREMENTS OF THIS AGREEMENT, EISD MAY (I) REQUIRE VENDOR TO PROMPTLY PROVIDE THE SERVICES AGAIN IN CONFORMITY WITH SUCH REQUIREMENTS, WITH NO ADDITIONAL CHARGE TO EISD; (II) EQUITABLY REDUCE PAYMENT DUE TO VENDOR TO REFLECT THE REDUCED VALUE OF THE SERVICES PROVIDED; OR (III) TERMINATE THIS AGREEMENT, IN WHOLE OR IN PART, WITHOUT PENALTY, LIABILITY, OR FURTHER OBLIGATION, AND RECEIVE A REFUND OF AN EQUITABLE PORTION OF ANY FEES, INCLUDING, BUT NOT LIMITED TO, ANY LICENSE, SUBSCRIPTION, HOSTING, AND MAINTENANCE FEES, PAID BY EISD FOR THE AFFECTED SERVICES.

VENDOR SHALL NOT LIMIT, EXCLUDE, OR DISCLAIM ANY WARRANTY(IES) OR INDEMNIFICATION OBLIGATIONS CONTAINED HEREIN OR ANY WARRANTY(IES) IMPLIED BY LAW, AND ANY ATTEMPT TO DO SO SHALL BE WITHOUT FORCE OR EFFECT.

13. **INDEMNITY:** VENDOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND EISD AND EACH OF ITS RESPECTIVE PAST, PRESENT, AND FUTURE TRUSTEES, OFFICERS, EMPLOYEES, AND AGENTS IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, COSTS, FINES, CIVIL PENALTIES, LOSSES OR DAMAGES, INCLUDING ATTORNEY'S FEES, COURT COSTS, AND EXPENSES, INCURRED BY EISD AND ITS TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES FOR INJURY TO PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY AND DEMANDS OR CAUSES OF ACTION OF WHATEVER KIND OR NATURE ASSERTED BY ANY THIRD PARTY, BASED UPON, RESULTING FROM, ARISING OUT OF, OR IN ANY WAY INCIDENT OR RELATED TO ANY ACT, ERROR, OMISSION, MISREPRESENTATION, OR MISCONDUCT OF VENDOR OR ITS EMPLOYEES, AGENTS, OFFICERS, OR SUBCONTRACTORS IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT OR THE SERVICES.

VENDOR'S INDEMNIFICATION OBLIGATIONS HEREUNDER SHALL APPLY TO ANY CLAIM ALLEGING THAT ANY PORTION OF ANY INTELLECTUAL PROPERTY PROVIDED OR MADE AVAILABLE TO EISD BY VENDOR, ITS EMPLOYEES, AGENTS, OFFICERS, OR SUBCONTRACTORS IN CONNECTION WITH THIS AGREEMENT INFRINGES A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS, INCLUDING U.S. COPYRIGHT, PATENT, OR TRADEMARK.

TO THE EXTENT THAT VENDOR IS ALLOWED TO CONTROL THE DEFENSE OF ANY CLAIM HEREUNDER, INCLUDING SETTLEMENT OF SUCH CLAIM, IN LITIGATION OR OTHERWISE, VENDOR'S SELECTION OF LEGAL COUNSEL AND ANY SETTLEMENT REQUIRING ANY ADMISSION OF LIABILITY BY EISD, IMPOSING ANY PECUNIARY OR EQUITABLE OBLIGATION ON EISD, OR ADVERSELY AFFECTING ANY RIGHTS OF EISD UNDER THIS AGREEMENT OR APPLICABLE LAW SHALL BE SUBJECT TO EISD'S PRIOR WRITTEN CONSENT.

NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS LIMITING VENDOR'S OBLIGATIONS UNDER THIS SECTION. THE PARTIES AGREE THAT, WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF VENDOR'S OBLIGATIONS HEREUNDER, SUCH LEGAL LIMITATIONS ARE MADE A PART OF VENDOR'S OBLIGATIONS HEREUNDER TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY

WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, VENDOR'S OBLIGATIONS HEREUNDER SHALL CONTINUE IN FULL FORCE AND EFFECT.

NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO CREATE A CLAIM OR CAUSE OF ACTION AGAINST EISD FOR WHICH IT IS NOT OTHERWISE LIABLE, OR TO REQUIRE EISD TO INDEMNIFY VENDOR, ITS EMPLOYEES, AGENTS, AFFILIATES, OR ANY OTHER PARTY IN ANY CAPACITY OR OTHERWISE CREATE AN IMPERMISSIBLE INDEMNIFICATION OBLIGATION OR DEFICIENCY DEBT OF EISD.

14. **Confidential Information:** A party may provide confidential or proprietary information to the other party in connection with this Agreement that: (1) is marked as being confidential or proprietary; (2) if delivered in oral form, is summarized in writing within ten (10) EISD business days and identified as being confidential or proprietary; (3) should be reasonably understood by the receiving party to be confidential or proprietary in light of the type or nature of the information or circumstances associated with the disclosure of the information; or (4) is made confidential by law (collectively, "Confidential Information").

It is expressly understood and agreed by the parties that Confidential Information includes the Software and Documentation, any District Data (as defined in the DPA), and any EISD and third-party intellectual property, EISD system(s), and other information processed or stored on computers or other electronic media by EISD or on EISD's behalf, provided to Vendor for such processing or storage, or otherwise provided or made available to Vendor by EISD, its employees, students, parents, contractors, agents, and affiliates in connection with this Agreement or the Services.

Except to the extent that a more stringent requirement applies to District Data pursuant to the DPA or applicable law, which requirement shall control in all cases, the receiving party shall: (i) hold Confidential Information in strict confidence, using commercially reasonable measures to maintain the confidentiality and security of Confidential Information; (ii) except as previously authorized in writing by the disclosing party, not publish or disclose Confidential Information to anyone other than the receiving party's employees on a need-to-know basis, provided that such employees are bound, in writing or through reasonable employment contracts and/or policies of the receiving party, to confidentiality obligations no less restrictive than those set forth herein; and (iii) use Confidential Information solely for the purpose of providing Services to EISD under this Agreement for the benefit of EISD and its students and for no other purpose.

15. **Injunctive Relief:** The parties agree that a violation, or threatened violation, of Section 14 (Confidential Information) shall be deemed to cause irreparable harm, for which monetary damages would not provide adequate compensation, that justifies immediate injunctive relief against such breach or threatened breach without proving actual damage or posting a bond or other security and, without limiting any rights, remedies, or defenses available to the parties, may result in termination of this Agreement for cause.
16. **Compelled Disclosure:** Nothing in this Agreement shall be construed as prohibiting EISD from disclosing any information related to or in connection with this Agreement or the Services in accordance with applicable law, including court order, subpoena, and the Texas Public Information Act, or as imposing any liability on EISD in connection with any such disclosure. In the event that EISD is required to disclose information in response to a request under the Texas Public Information Act or other applicable law, EISD's compliance with the requirements of the Texas Public Information Act or such other applicable law, which may or may not require notice to Vendor, shall be deemed sufficient to satisfy any obligations of EISD regarding confidential or proprietary information under this Agreement, and Vendor hereby waives any claim against and releases from liability EISD, its officers, employees, agents, and attorneys with respect to any such disclosure.
17. **Protected Health Information:** If EISD determines that the Vendor, its employees, subcontractors, or agents will access, maintain, use, or disclose "protected health information" subject to the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5) ("HITECH"), and/or the Texas Medical Records Privacy Act, Tex. Health & Safety Code

Ann. § 181.001 et seq. ("TMRPA"), in addition to and as part of the terms and conditions of this Agreement, the parties agree to enter into a Business Associate Agreement, in form and substance reasonably agreeable to both parties, providing for the privacy and security of such protected health information as required by HIPAA, HITECH, and the TMRPA, as such laws may be amended from time to time by the authorities having jurisdiction thereof.

18. **Subcontractors:** If Vendor is permitted to use subcontractors in the performance of any part of this Agreement, Vendor shall ensure that each subcontractor complies with all provisions of this Agreement, and Vendor shall be fully responsible to EISD for any and all acts and omissions of the subcontractor(s) just as Vendor is responsible for Vendor's own acts and omissions. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between EISD and any such subcontractor, nor shall it create any obligation on the part of EISD to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law.
19. **Termination for Convenience:** EISD may terminate this Agreement for convenience, in whole or in part, at any time, without penalty, liability, or further obligation, upon providing at least thirty (30) days advance written notice to Vendor. In the event of such termination, Vendor will be paid for all Services actually provided and duly accepted by EISD up to the effective date of termination, less any compensation already paid. For the avoidance of doubt, in no event will any Services be deemed to have been provided or accepted for any period beyond the then-current year of the Term.
20. **Termination for Cause:** A party will be in default of this Agreement if such party fails to comply with any obligation in this Agreement and such failure continues for ten (10) EISD business days after receiving written notice of default from the non-defaulting party. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Agreement for cause, without penalty, liability, or further obligation, as of the date specified in the notice, and may seek other relief as provided by law. In the event of termination by EISD for cause during the Term of this Agreement, without limiting any rights or remedies of EISD under this Agreement or applicable law, EISD shall be entitled to a refund of an equitable portion of any fees, including, but not limited to, any license, subscription, hosting, and maintenance fees, paid by EISD for the affected Services.
21. **SLA Material Breach and Termination:** For purposes of this Section, an "Interruption in Services" shall mean that the Software has stopped working or has been severely impacted such that most functions or one or more critical business functions are unusable by EISD for 8 hours or more as a result of failure of Vendor-provided facilities, equipment, personnel, or other services. In the event of 2 or more Interruptions in Services during any one-month period or 3 or more Interruptions in Services during any six-month period, EISD may terminate this Agreement for cause in accordance with Section 20, above.
22. **Non-Appropriation of Funds:** The parties agree that this Agreement is a commitment of EISD's current revenue only. Notwithstanding any contrary provision of this Agreement, any payment obligation(s) of EISD created by this Agreement shall be conditioned upon the availability of funds that are duly appropriated and allocated for such purpose. If such funds are not available, as determined by EISD in its sole discretion, EISD shall have the right to terminate this Agreement, without default, penalty, or further obligation or liability to Vendor, effective at the end of the period for which such funds are available. In the event this provision is exercised, EISD shall provide written notice of non-appropriation, specifying the effective date of termination, to Vendor as soon as reasonably practicable.
23. **Transition Obligations:** Upon termination of this Agreement, the following shall apply:
 - a. The parties shall reasonably, and in good faith, negotiate and agree, in writing, upon a transition plan ("Transition Plan") providing, at a minimum, for:
 - i. A final transition term agreeable to both parties, but not less than the time reasonably required by EISD to procure and implement replacement services ("Transition Period");
 - ii. Vendor's provision to EISD of reasonable assistance in transitioning to another vendor, as deemed necessary by EISD, including, but not limited to, continued access to and use of the Services as set forth under this Agreement and any transition-related services

offered by Vendor, (collectively, "Transition Services"), subject to EISD's payment of the Transition Fees (as defined below);

- iii. Reasonable pro-rated fees for the Transition Services ("Transition Fees"), provided that the Transition Fees shall apply only to the extent that the Transition Services exceed the scope of Services already provided for under this Agreement and that any applicable Transition Fees shall not exceed the fees agreed upon by the parties in Exhibit A or offered by Vendor in Vendor's proposal submitted in response to [Applicable District RFP Document], prorated for EISD's actual use of the Transition Services during the Transition Period; and
- iv. The date upon which EISD's access to and use of the Services will terminate, subject to any reduction or extension of the Transition Period reasonably agreed upon by the parties in writing.

24. **Independent Contractor:** EISD and Vendor hereby agree that, in performing the Services, Vendor will be deemed an independent contractor and not EISD's employee or agent. This Agreement will not be construed to create any partnership, joint venture, or other similar relationship between EISD and Vendor or EISD and any of Vendor's employees or agents. As an independent contractor, Vendor will be solely responsible for determining the means and methods for performing the Services and shall furnish all tools, materials, transportation, and personal incidentals necessary in the performance of the Services. Vendor agrees that EISD has no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.
25. **Use of EISD Name or Logos:** Vendor shall not use EISD's name, logo, any phrase associated with EISD, or other likeness without prior written permission from EISD's Board of Trustees, Superintendent of Schools, or their designee.
26. **Non-Solicitation:** Neither party shall knowingly solicit any of the other party's employees involved in this Agreement, during the Term of this Agreement and for a period of one (1) year from the termination thereof, without the express written consent of the other party. Nothing in this Agreement shall be construed as restricting the right of either party to solicit or recruit generally in the media.
27. **Time is of the Essence:** Time is of the essence in the performance of this Agreement.
28. **Notices:** Any notice required or permitted by this Agreement shall be in writing and addressed to the party at the address set forth below, or such other address as is subsequently specified by written notice in the manner provided herein. Notices shall be effective as of: (i) the date delivered by hand, (ii) three (3) EISD business days after such notice shall have been deposited with a national courier service or Registered/Certified U.S. Mail, postage prepaid, return receipt requested, with a courtesy copy of such notice provided by email on the date of such deposit; or (iii) if not provided in accordance with (i) or (ii) above, the date such notice is actually received.

To EISD:

To Vendor:

29. **Compliance with Law:** Vendor agrees to observe and abide by all applicable state, federal, and local laws, as currently written and as may be amended from time to time by the authorities having jurisdiction over such matters, in the performance of this Agreement.
30. **Insurance Requirements:** Vendor shall make adjustments to insurance coverages and limits as reasonably prudent, based upon changes in statutory laws, court decisions, or potential increase in exposure to loss, in order for Vendor to maintain commercially reasonable, industry standard insurance coverages and limits

sufficient to cover any Vendor risks, liabilities, or other obligations that may arise under this Agreement. Noncompliance or misrepresentation regarding this Section may be grounds for immediate termination of this Agreement for cause.

31. **Records Retention and Audit by EISD:** Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and services provided by Vendor to EISD under this Agreement. These records and accounts shall be retained by Vendor and made available for audit by EISD for a period of not less than 10 years from the date of completion of the Services or the date of EISD's final payment in connection with this Agreement, whichever is later. If an audit has been announced, Vendor shall retain its records and accounts until such audit has been completed. When federal funds are expended by EISD pursuant to this Agreement, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Upon written notice from EISD, Vendor shall permit EISD's internal and external auditors, the Texas Education Agency, the Comptroller General of the United States, or any of their duly authorized representatives (collectively, "Auditor") to conduct audits or investigations in connection with this Agreement. Vendor agrees to cooperate with the Auditor conducting such audits or investigations and to provide the Auditor access to or copies of any books, documents, papers, and records of Vendor which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts, and transcriptions.

32. **Software Audits:** Notwithstanding any contrary provision of this Agreement, during the Term of this Agreement, Vendor may, at Vendor's sole cost and expense, conduct commercially reasonable audits of EISD's use of the Software no more than once per calendar year. Vendor shall provide EISD not less than ten (10) EISD business days' prior written notice of any such audit. EISD will reasonably cooperate with such audit, including providing access, at EISD's facilities, during EISD's regular business hours, to EISD's books, computers, records, or other information to the extent directly pertinent to EISD's use of the Software and as reasonably necessary to determine EISD's compliance with this Agreement; provided that EISD shall be entitled to reasonably redact any confidential or proprietary information contained therein. Any audit conducted hereunder shall not unreasonably interfere with EISD's business activities. If Vendor discovers any unauthorized use, reproduction, or distribution of the Software by EISD, subject to any necessary approvals by EISD's administration and Board of Trustees, EISD in its sole discretion, may elect to (1) pay to Vendor the reasonable, actual cost of such unauthorized use, reproduction, or distribution, based on the fees set forth in Exhibit A and Vendor's proposal submitted in response to [Applicable District RFP Document], which payment shall be Vendor's sole and exclusive remedy in connection with any such unauthorized use, reproduction, or distribution; or (2) dispute Vendor's determination that any such unauthorized use, reproduction, or distribution has occurred and assert any defense available at law, in equity, or otherwise.
33. **Severability:** If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions of this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
34. **Contract Interpretation:** The parties acknowledge that this Agreement is the result of substantial negotiations between the parties and agree that nothing in this Agreement shall be construed or interpreted against either party because such party or its legal counsel drafted the Agreement.
35. **Force Majeure:** Neither party's delay or failure to perform any obligation under this Agreement shall be deemed a breach of this Agreement to the extent that such delay or failure is due to an act of God, storm, flood, washout, governmental order, regulation, or other action, disease, including epidemic and pandemic, fire, war, insurrection, riot, act of the public enemy or terrorist act strike, civil disturbance, or any other cause beyond the reasonable control of the party claiming force majeure and which by the exercise of due diligence such party is unable to prevent or overcome; provided that force majeure shall only exist during the continuance of such cause and no longer and that the party claiming force majeure shall attempt to

remedy such cause with reasonable dispatch and shall resume performance immediately after the obstacles to performance caused by the force majeure event have been removed. Notwithstanding any other provision of this Agreement, in the event that Vendor's performance of its obligations under this Agreement is delayed or stopped by a force majeure event for thirty (30) days or more, EISD shall have the right to terminate this Agreement without penalty or further obligation upon written notice to Vendor. This Section shall not be interpreted as to limit or otherwise modify any of the parties' contractual, legal, or equitable rights.

36. **Governing Law/Venue:** This Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Mandatory and exclusive venue for any dispute arising out of this Agreement or the Services shall be a court of competent jurisdiction in Travis County, Texas, and the parties hereby submit to the jurisdiction of said courts. Nothing in this Agreement shall be construed as requiring EISD to subject any dispute arising out of this Agreement to mediation or arbitration.
37. **Amendment:** This Agreement may be modified or amended only in writing, properly executed by both Vendor and EISD, including any necessary approvals by EISD's administration and Board of Trustees, and attached hereto.
38. **Waiver:** A party may waive a provision or requirement of this Agreement only in writing, properly executed by such party. A party's waiver of a provision or requirement of this Agreement shall not be effective as to any other provision or requirement of this Agreement or any subsequent breach of the same provision or requirement. Nothing in this Agreement shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of EISD, its trustees, officers, employees, or agents as a result of the execution of this Agreement or performance of the functions or obligations described herein.
39. **Non-Exclusivity:** Nothing in this Agreement shall be construed as limiting any rights or remedies of EISD under this Agreement or applicable law.
40. **Assignment:** No assignment of this Agreement or of any duty or obligation or performance hereunder, shall be made in whole or in part by either party without the prior written consent of the other party. Any assignee of Vendor shall satisfy the standard minimum qualifications required to do business with EISD, including EISD's insurance requirements and any required Vendor disclosures and certifications.
41. **Captions:** The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.
42. **Survival:** The following provisions shall survive termination of this Agreement: Sections 1, 6-9, 11-16, 18-20, 22-26, 28, 29, 30-42, 45-47; and (2) any other provision of this Agreement that must survive to fulfill its essential purpose.
43. **Certification of Non-Indebtedness to EISD:** Pursuant to Section 44.044, Texas Education Code, by resolution, EISD may establish regulations permitting it to refuse to enter into a contract with a person indebted to it. A person, under this Section, includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with EISD requiring approval by its Board of Trustees. By executing this Agreement, Vendor certifies that it is not indebted to EISD.
44. **HB 793/SB 252 Certifications:** Vendor certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (b) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the Term of this Agreement. For purposes of this

Agreement, the term “boycott” shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

45. **SB 943 Certification:** If Vendor is not a governmental body and (a) this Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by EISD; or (b) this Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by EISD in a fiscal year of EISD, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov’t Code § 552.374(b), the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): “The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.” Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Vendor hereby certifies and agrees to (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to EISD for the duration of the Agreement; (2) promptly provide to EISD any contracting information related to the Agreement that is in the custody or possession of the Vendor on request of EISD; and (3) on completion of the Agreement, either (a) provide at no cost to EISD all contracting information related to the Agreement that is in the custody or possession of Vendor, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to EISD.
46. **Limitations:** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF EISD (A PUBLIC SCHOOL) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON EISD’S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS’ FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE “LIMITATIONS”), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON EISD EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
47. **Entire Agreement:** Notwithstanding any contrary provision of any Agreement Document, this Agreement constitutes the entire agreement between the parties regarding the Services, and supersedes all prior contracts, agreements, representations, and understandings made by the parties relating to such subject matter. EISD expressly rejects any other agreements, terms, conditions, or policies, including, any terms of use, licensing agreements, privacy policies, or other agreements or understandings, that may be incorporated by reference in Exhibit D, pre-published on any Vendor or third-party websites, order acknowledgments, invoices, or forms, or otherwise provided by Vendor or any third party in connection with the Services, whether electronic, click-through, verbal, or in writing, regardless of any agreement thereto by EISD employees or agents, and any such agreements shall be null, void, and without effect unless properly executed by EISD and attached to this Agreement as an Agreement Document. Notwithstanding any contrary provision therein, no subsequent revision or modification to any Vendor Agreement Document shall be binding upon EISD unless properly executed by EISD and attached hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of _____, 20__.

VENDOR: _____

BY: _____
Printed Name: _____
Title: _____
Date: _____

EANES INDEPENDENT SCHOOL DISTRICT

BY: _____
Printed Name: _____
Title: _____
Date: _____

DATA PROTECTION ADDENDUM (“DPA”)

This DATA PROTECTION ADDENDUM (“DPA”) is entered into by and between _____ (“Vendor”) and Eanes Independent School District (“District”) (collectively, the “Parties” and each individually, a “Party”), to address Vendor’s access to, and use, maintenance, and disclosure of, District Data (as defined below). This DPA is hereby made part of the EISD Software Agreement between the Parties dated [INSERT EFFECTIVE DATE OF AGREEMENT] (the “Agreement”), as of the effective date set forth in the Agreement (the “Effective Date”), as a condition to Vendor’s access to District Data in connection with the Agreement. In the event of any conflicts or inconsistencies between or among this DPA, the Agreement, and/or applicable law, the Parties agree that the requirement that affords the most protection to District Data will supersede and prevail.

1. Definitions

- A. “Contracted Third Party” means a subcontractor or other third party with whom the Vendor has contracted to provide Services for or on behalf of the Vendor for a School Purpose under the Agreement.
- B. “District Data” means all information, including, but not limited to, business, administrative, financial, student, and personnel information, and work product or other intellectual property that is: (1) created by the District, its employees, contractors, agents, affiliates, students, parents, and users, or provided or otherwise made available to Vendor, its employees, agents, or subcontractors by the District, its employees, contractors, agents, affiliates, students, parents, and users through the Services or otherwise in connection with the Agreement, or (2) gathered by Vendor, its employees, agents, or subcontractors through the Services or other means (e.g., Vendor technology) in connection with the Agreement. District Data includes, but is not limited to:
 - 1. Personal identifiers such as name, address, phone number, date of birth, Social Security number, identification number, persistent unique identifiers, and the like;
 - 2. Any personal information protected by law, including, but not limited to:
 - a. “personally identifiable information” and student “education records” as those terms are defined under the Family Educational Rights and Privacy Act, 20 USC 1232g, as amended (“FERPA”);
 - b. “personal information” as that term is defined in the Children’s Online Privacy Protection Act of 1998 (“COPPA”);
 - c. “personal information” as that term is defined in the Protection of Pupil Rights Amendment (“PPRA”);
 - d. “personally identifiable information” as that term is defined in the Individuals with Disabilities Education Act, as amended (“IDEA”);
 - e. “covered information” as defined under Chapter 32, Subchapter D, Texas Education Code;
 - f. “personal identifying information” and “sensitive personal information” as defined under the Texas Identity Theft Enforcement and Protection Act (Chapter 521, Texas Business and Commerce Code);
 - g. nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809 (“GLB”);
 - h. credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards (“PCI-DSS”);
 - 3. Other financial account numbers, access codes, driver’s license numbers;
 - 4. State or federal identification numbers such as passport, visa or state identity card numbers;
 - 5. Information that identifies an individual and relates to the physical or mental health or condition of the individual, the provision of health care to the individual, or payment for the provision of health care to the individual; and
 - 6. The types or categories of information expressly listed in Exhibit A attached hereto, if any.
- C. “Mining District Data” means to search through, access, manipulate, or extract District Data for a purpose other than providing Services to the District for a School Purpose under the Agreement.
- D. “School Purpose” means a purpose that is directed by or customarily takes place at the direction of a school district, school campus, or teacher or assists in the administration of school activities, including instruction

in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or is otherwise for the use and benefit of the school.

- E. "Securely Destroy" means taking commercially reasonable actions that render data written on physical or electronic media unrecoverable, including, but not limited to, actions that meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88 guidelines relevant to data categorized as high security (provided that, in accordance with NIST 800-88r1 guidance, Vendor shall comply with the level "purge" with a Cryptographic Erase (*i.e.*, not a simple delete/erase that leaves the previous contents available until overwritten through normal use) while the media is still in operation and under the actual or constructive possession and control of Vendor and "destroy" only when the media has reached end of life (EOL) and/or will no longer be under the actual or constructive possession and control of Vendor), or the DoD 5220.22-M (3 pass) data sanitization method, as applicable.
- F. "Security Incident" means an event in which District Data is exposed to unauthorized disclosure, access, alteration, or use, or circumstances that are reasonably expected to have exposed District Data to unauthorized disclosure, access, alteration, or use.
- G. "Services" means the products and/or services provided to the District in connection with the Agreement.
- H. "Targeted Advertising" means presenting an advertisement to a student in which the advertisement is selected for the student based on information obtained or inferred over time from the student's online behavior, usage of applications, or covered information. The term does not include advertising to a student at an online location based on the student's visit to that location at that time, or in response to the student's request for information or feedback, without the retention of the student's online activities or requests over time for the purpose of targeting subsequent advertisements.

Technical terms not defined herein that have a well-known technical or trade meaning, shall be held to have such recognized meaning.

2. Rights In and To District Data

Vendor agrees that, as between the District and Vendor, District Data is and shall remain the sole and exclusive property of the District. The District hereby authorizes the Vendor to access, maintain, use, and disclose District Data, subject to the terms and conditions of the Agreement, this DPA, and applicable law, solely as reasonably necessary to provide Services to the District for a School Purpose under the Agreement. Vendor has no rights, implied or otherwise, to District Data, except as expressly stated in this DPA.

3. Vendor's Use and Disclosure of District Data

- a. Vendor shall access, maintain, use, and disclose District Data, subject to the terms and conditions of the Agreement, this DPA, and applicable law, solely as reasonably necessary to provide Services to the District for a School Purpose under the Agreement.
- b. Vendor is prohibited from Mining District Data unless such activity is permitted by law and expressly authorized by the District in advance in writing.
- c. Except as expressly permitted under this DPA, Vendor will not disclose or allow the disclosure of District Data, including any goods, products, materials, documents, reports, writings, video images, photographs, papers, or software or computer images of any nature prepared by Vendor, its employees, agents, or subcontractors that incorporate District Data, to any other person or entity.
- d. To the extent permitted by law, and solely as reasonably necessary to provide Services to the District for a School Purpose under the Agreement, Vendor may provide access to, export, transfer, or otherwise disclose District Data to Vendor's employees and Contracted Third Parties; provided, however, that: (1) prior to any such disclosure, the employee or Contracted Third Party receiving District Data has agreed in writing to comply with data protection obligations substantially similar to, and in no event less restrictive than, those applicable to Vendor under the Agreement, this DPA, and applicable law; (2) if the party receiving District Data is a Contracted Third Party, Vendor's contract with any such Contracted Third Party: (i) prohibits the Contracted Third Party from using District Data for any purpose other than providing Services to the District for a School Purpose under the Agreement, and (ii) requires the Contracted Third Party to implement and maintain reasonable procedures and practices designed to prevent disclosure of District Data; and (3) the employee or Contracted Third Party shall not further disclose District Data.

- e. Vendor shall, prior to disclosing District Data, ensure that any Vendor employees, agents, and subcontractors who will have access to District Data have, prior to any such access, undergone appropriate, commercially reasonable background screening and other screening as required by law, and that any such employees, agents, and subcontractors possess all necessary qualifications and have read, understood, and received appropriate instruction as to how to comply with the requirements of the Agreement, this DPA, and applicable law.
- f. If, in connection with the Agreement, the Vendor must create, obtain, transmit, use, maintain, process, or dispose of personal information that is protected by law or financial or business data that has been identified to the Vendor as having the potential to affect the accuracy of the District's financial statements, Vendor shall perform the following background checks on all employees, subcontractors, and agents are reasonably expected to have access to such data in accordance with the Fair Credit Reporting Act: Social Security Number trace; seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes; Office of Foreign Assets Control List (OFAC) check; Bureau of Industry and Security List (BIS) check; and Office of Defense Trade Controls Debarred Persons List (DDTC).
- g. Vendor will not otherwise access, maintain, or use District Data or share District Data with or disclose it to any third party without the prior written consent of the District, except as required by law in accordance with Section 9 of this DPA.

4. FERPA Acknowledgements

- a. Vendor acknowledges that, for purposes of the Agreement, it will be designated a "school official" with "legitimate educational interests" in "personally identifiable information" and student "education records", as those terms have been defined under FERPA and its implementing regulations, and Vendor agrees to abide by the FERPA limitations and requirements imposed upon school officials.
- b. The District and Vendor expressly agree that: (1) the services/functions to be provided by Vendor are services/functions for which the District would otherwise use its own employees; (2) Vendor has been determined to meet the criteria set forth in the District's annual notification of FERPA rights for being a school official with legitimate educational interests in the "personally identifiable information" and student "education records" disclosed to Vendor for purposes of the Agreement; (3) Vendor is under the District's direct control with respect to its access to, and maintenance, use, and disclosure of, "personally identifiable information" and student "education records"; and (4) unless Vendor has specific written authorization from the District to do so and it is otherwise permitted by FERPA, Vendor will access, maintain, use, and disclose "personally identifiable information" and student "education records" only for the purpose for which the disclosure was made and will not re-disclose "personally identifiable information" and student "education records" to other parties.
- c. To the extent that students or parents/guardians may be required to accept or are otherwise made subject to any separate terms of use, privacy policies, or other agreement(s) (e.g., click-through terms and conditions or other agreements) in connection with the Services or the Agreement, Vendor shall ensure that no such agreement (including any Contracted Third Party's agreement) requires the student or parent/guardian to waive any rights or other protections to which he/she may be entitled under FERPA. Any provision in such agreement(s) to the contrary shall be null, void, and without effect and this DPA shall apply.

5. Data Security and Confidentiality

- a. District Data, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. Vendor will store and process District Data in accordance with commercial best practices, including, but not limited to, implementing and maintaining appropriate administrative, physical, and technical safeguards and other security procedures and practices designed to preserve the confidentiality, integrity and availability of District Data and protect such data from unauthorized access, deletion, disclosure, modification, interception, diversion, and use. Such measures will be no less protective than those used to secure Vendor's own data of a similar type, and in no event less than commercially reasonable in view of the type and nature of the data involved. These requirements will be extended by contract to all subcontractors and agents used by Vendor.

- b. Vendor will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing the Services under the Agreement and accessing, maintaining, using, and disclosing District Data in connection therewith.
- c. Without limiting the foregoing, Vendor agrees that Vendor, its subcontractors and agents (including any data center), as applicable, shall meet or exceed the following standards and requirements in maintaining the security and confidentiality of District Data in connection with the Agreement:
 - i. PCI-DSS v3.2 requirements;
 - ii. TIA 942 Class 4 Data Center Standards or a substantially similar standard;
 - iii. All electronic District Data will be encrypted in transmission using Transmission Layer Security (TLS) v1.2 or greater (including via web interface or equivalent); and
 - iv. All electronic District Data stored on a mobile device, laptop, desktop or any other device that does not meet the requirements of (i) or (ii) above will be encrypted at no less than AES 128-bit level encryption.
- d. Vendor shall, upon request, provide the District with a reasonably detailed written summary of the procedures Vendor, its subcontractors and agents use to maintain and transmit District Data.
- e. District Data shall not be stored outside the United States without the District's prior written consent.
- f. Vendor will take commercially reasonable measures, including, but not limited to, audit trails, to protect District Data from deterioration or degradation of data quality and authenticity.
- g. Vendor will regularly back up District Data in a commercially reasonable manner and retain any such backups for a minimum of 12 months.

6. Security Incidents

- a. Response. Upon becoming aware of a Security Incident, Vendor will immediately, and within the time reasonably necessary for the Parties to comply with applicable legal requirements, (1) notify the District's Superintendent of Schools to begin remediation of compromised data, (2) fully investigate the incident, and (3) cooperate as reasonably requested with the District's investigation of and response to the incident. Except as otherwise required by law, and without affecting Vendor's obligations under Section 6(b), below, the District will, in its sole discretion, provide or, alternatively, direct Vendor to provide any breach notification required by laws applicable to District Data in connection with the Security Incident, and Vendor will not provide notice of the incident directly to individuals whose personal information was involved, regulatory agencies, or other entities, without prior written permission from the District.
- b. TO THE FULLEST EXTENT PERMITTED BY LAW, AND IN ADDITION TO ANY OTHER RIGHTS OR REMEDIES OF THE DISTRICT UNDER CONTRACT, LAW, OR EQUITY, TO THE EXTENT THAT ANY SECURITY INCIDENT ARISES OR RESULTS FROM VENDOR'S, ITS EMPLOYEE'S, SUBCONTRACTOR'S, OR AGENT'S FAILURE TO COMPLY WITH ANY REQUIREMENT OF THE AGREEMENT, THIS DPA, OR APPLICABLE LAW, THE VENDOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD THE DISTRICT, ITS TRUSTEES, AGENTS, EMPLOYEES, CONTRACTORS, AND VOLUNTEERS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITY, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, JUDGMENTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES), INCLUDING, BUT NOT LIMITED TO: (1) ALL COSTS INCURRED BY THE DISTRICT IN CONNECTION WITH THE INVESTIGATION AND REMEDIATION OF THE SECURITY INCIDENT; (2) THE COST OF PROVIDING NOTIFICATION TO INDIVIDUALS OR ENTITIES WHOSE INFORMATION WAS COMPROMISED AND TO REGULATORY AGENCIES OR OTHER ENTITIES AS REQUIRED BY LAW OR CONTRACT; (3) PROVIDING ONE YEAR OF CREDIT MONITORING TO AFFECTED INDIVIDUALS IF PERSONAL INFORMATION EXPOSED DURING THE INCIDENT COULD BE USED TO COMMIT IDENTITY THEFT; (4) ALL CRISIS MANAGEMENT, REGULATORY RESPONSE, AND OTHER PRIVACY LIABILITY COSTS; AND (5) THE PAYMENT OF LEGAL FEES, AUDIT COSTS, FINES, CIVIL PENALTIES, AND OTHER FEES IMPOSED AGAINST THE DISTRICT IN CONNECTION WITH THE SECURITY INCIDENT.

7. Response to Legal Orders, Demands or Requests for Data

- a. Except as expressly prohibited by law, Vendor will:

- i. Immediately, and before disclosing any District Data, notify the District, in writing, of any subpoenas, warrants, or other orders, demands or requests received by Vendor, its employees, subcontractors or agents seeking District Data;
 - ii. Reasonably consult with the District regarding Vendor's response, which may include, but is not limited to, directing the requestor to seek the information directly from the District, as appropriate;
 - iii. Cooperate with the District's reasonable requests in connection with efforts by the District to intervene and quash or modify the order, demand, or request; and
 - iv. Upon the District's request, provide the District with a copy of its response.
- b. If the District receives a subpoena, warrant, or other order, demand, or request (including, but not limited to, a request for information pursuant to the Texas Public Information Act, FERPA, or similar law) seeking District Data in the Vendor's, its employees', subcontractors', or agents' actual or constructive possession, custody, or control, the District will provide information regarding the request to Vendor and provide a deadline by which the Vendor must supply the District with records or information required for the District to timely respond to the request. Vendor will ensure that all requested records and information are supplied to the District by the deadline provided by the District and will reasonably cooperate with the District's other requests in connection with the District's response.

8. Data Transfer/Destruction

- a. Upon termination of the Agreement, or as otherwise requested by the District in writing, Vendor shall ensure that all District Data in Vendor's, its employees', subcontractors', and agents' actual or constructive possession, custody, or control is transferred to the District (or a third party designated by the District) as reasonably directed by the District.
- b. Transfer of District Data to the District (or a third party designated by the District) shall occur within a reasonable period of time following termination of the Agreement or the District's written request. Vendor will use commercially reasonable efforts to ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the District or its designated transferee, and to the extent reasonably technologically feasible, that the District will have access to District Data during the transition.
- c. If the District requests destruction of any District Data at any time, not later than sixty (60) days after the date of the District's request, Vendor shall Securely Destroy all such District Data in its actual or constructive possession, custody, or control and ensure that all District Data in the actual or constructive possession, custody, or control of Vendor's employees, subcontractors, and agents is Securely Destroyed. Notwithstanding the foregoing, unless otherwise directed by the District, District Data shall be Securely Destroyed when it is no longer needed for the designated purpose for which such data was disclosed to the Vendor. The Vendor agrees to provide documentation of data destruction to the District upon the District's reasonable request.

9. Change in Circumstances; Assignment

- a. Vendor will promptly notify the District in writing of any change in Vendor's or its employees', subcontractors', or agents' business or other circumstances that Vendor reasonably anticipates may affect District Data, including, but not limited to, any impending transfer or cessation of business or unlawful conduct. Vendor will reasonably cooperate with the District to minimize the effect of any such change in circumstances on the District, which may include, but is not limited to: (1) providing a full inventory of all District Data in the Vendor's, employee's, subcontractor's, or agent's actual or constructive possession, custody, or control and the location of same; (2) providing the District access to any Vendor facility, or reasonably assisting the District in obtaining access to other facilities and systems, as necessary to remove and Securely Destroy District Data or otherwise enforce the District's rights in and to District Data; and (3) upon the District's request, promptly transferring or Securely Destroying District Data, in whole or in part, as directed by the District.
- b. No assignment of this DPA or of any duty or obligation or performance hereunder, shall be made in whole or in part by either Party without the prior written consent of the other Party. In the event that a change in the Vendor's business circumstances, including, but not limited to, a merger, sale of company assets or shares, reorganization, financing, change of control, bankruptcy, or other corporate event, requires the assignment or other transfer of Vendor's rights, obligations, and/or liabilities with respect to District Data to a successor or other third party, prior to any such assignment or other transfer, Vendor must provide the District with written notice and an opportunity to object to such assignment or other transfer. The Parties will reasonably, and in good faith, collaborate to resolve the District's objection(s), if any; provided that:

- i. If the Parties are unable to resolve such objection to the District's satisfaction, notwithstanding any contrary provision of the Agreement, the District may terminate the Agreement, including this DPA, without penalty, liability, or further obligation to Vendor, and Vendor shall take commercially reasonable action to ensure a smooth transition of Services and transfer of District Data to the District or a third party designated by the District; and
- ii. If the District consents to such assignment or other transfer, any permitted successor or assign of the Vendor shall agree in writing to assume all of the Vendor's rights, interests, duties, obligations, and liabilities under this DPA prior to receiving access to District Data, and Vendor shall take all necessary actions to ensure a smooth transition of Services and/or transfer of District Data to such successor or assign.

10. Audits

- a. The District reserves the right, in its sole discretion, to perform audits of Vendor, at the District's expense, to ensure compliance with the terms of this DPA. The Vendor shall reasonably cooperate, and shall ensure that any Vendor employees, subcontractors, and agents reasonably cooperate, in the performance of such audits. Such audits shall only occur upon reasonable prior written notice to Vendor and in such a manner as to not unreasonably interfere with Vendor's operations.
- b. Vendor, or the data center(s) where Vendor maintains its systems and/or District Data, will, at Vendor's or such data center's expense, conduct or have conducted at least annually, a/an:
 - i. American Institute of CPAs Service Organization Controls (SOC) 2 Type II audit, or other commercially reasonable security audit, which attests the Vendor's or data center's security policies, procedures, and controls;
 - ii. Commercially reasonable vulnerability scan of the Vendor's or data center's electronic systems and facilities that are used in any way to provide Services or process or maintain District Data in connection with the Agreement; and
 - iii. Commercially reasonable formal penetration test of the Vendor's or data center's electronic systems and facilities that are used in any way to provide Services or process or maintain District Data in connection with the Agreement.
- b. Additionally, the Vendor shall provide the District, upon request, commercially reasonable summary results of the above audits and promptly modify its security measures as reasonably necessary based on those results in order to meet its obligations under the Agreement, this DPA, and applicable law.

11. Compliance

- a. Vendor warrants that the Vendor, its employees, and the Services shall be fully compliant, and will not adversely affect the District's compliance, with the relevant requirements of all state and federal laws, regulations, and guidance governing access to and use, maintenance, and disclosure of District Data. Vendor will use commercially reasonable efforts to ensure that Vendor's subcontractors and agents are fully compliant, and will not adversely affect the District's compliance, with the relevant requirements of all state and federal laws, regulations, and guidance governing access to and use, maintenance, and disclosure of District Data.
- b. Vendor warrants that any employees, subcontractors, and agents (including Contracted Third Parties) used by Vendor to provide the Services or otherwise fulfill Vendor's obligations under the Agreement will be subject to and will comply with the Agreement, this DPA, and applicable law in the same manner that Vendor itself is subject to the terms of the Agreement, this DPA, and applicable law.
- c. Except where a more stringent requirement is specified in the Agreement or this DPA, Vendor agrees to use commercially reasonable efforts to assist the District as necessary to maintain the security and confidentiality of District Data in accordance with the Agreement, this DPA, and applicable law.
- d. Upon the effective date of any amendment or issuance of laws, regulations, and guidance governing access to and use, maintenance, and disclosure of District Data, this DPA shall automatically be amended to conform with such requirements. Any ambiguity in this DPA shall be resolved in favor of a meaning that permits the District and Vendor, its employees, subcontractors, and agents to comply with any such laws, regulations, and guidance.

12. Term and Termination

- a. This DPA will become effective upon the Effective Date. Notwithstanding the termination of the Agreement, this DPA will continue in full force and effect until all District Data in the Vendor's, its employees', subcontractors', and agents' actual or constructive possession, custody, or control has been returned to the District or Securely Destroyed in accordance with Section 8.
- b. Notwithstanding any contrary provision of the Agreement, the District may immediately terminate the Agreement, including this DPA, for cause, without penalty, liability, or further obligation to Vendor, if the Vendor, its employee, subcontractor, or agent has breached a material term of this DPA and fails to cure such breach within ten (10) days after Vendor's receipt of written notice of such breach from the District; provided that, in the event that the breach is incapable of cure, the Agreement and/or this DPA shall terminate on the date specified in the District's notice.

13. Marketing/Advertisement

Vendor shall not use District Data for advertising or marketing purposes or to engage in any activity prohibited under Chapter 32, Texas Education Code, such as: (1) Targeted Advertising if the target of the advertising is based on any information acquired by Vendor for a School Purpose in connection with the Agreement, (2) marketing educational products directly to a student's parent if the marketing is the result of the use of information obtained by Vendor for a School Purpose in connection with the Agreement, (3) using information created or gathered by Vendor in connection with the Agreement to create a profile about a student for a purpose other than a School Purpose, or 4) selling or renting District Data. Any other use of District Data for advertising or marketing purposes shall be strictly prohibited unless Vendor has obtained the District's prior written consent.

14. Remedies

The Parties agree that, in addition to any legal or equitable rights and remedies of the District under the Agreement, this DPA, or applicable law, Vendor's, its employee's, subcontractor's, or agent's access to, or use, maintenance, or disclosure of (or threat to access, use, maintain, or disclose) any District Data in violation of the Agreement, this DPA, or applicable law shall be deemed to cause irreparable harm, for which monetary damages would not provide adequate compensation, that justifies injunctive relief against such breach or threatened breach without proving actual damage or posting a bond or other security. The Vendor further agrees to forfeit any fee(s) or other compensation payable by the District under the Agreement in the event the District terminates the Agreement for the Vendor's, its employee's, subcontractor's, or agent's material breach of any term of this DPA.

15. Amendment

The Parties may not alter or amend this DPA, except by written agreement properly executed by both Parties.

16. Entire Agreement

This DPA and the provisions of the Agreement, if any, directly concerning the security and confidentiality of District Data provided or otherwise made available to or gathered by the Vendor in connection with the Agreement constitute the entire agreement between the Parties regarding such subject matter and supersede any and all prior and contemporaneous representations, discussions, negotiations, and agreements—oral or written—by and between the Parties. The District expressly rejects any other agreements, terms, conditions, or policies, including, any terms of use, licensing agreements, privacy policies, or other agreements or understandings, that may be pre-published on any Vendor order acknowledgments, invoices, or forms, or otherwise proffered by Vendor or any third party in connection with the Agreement, whether electronic, click-through, verbal, or in writing, regardless of any agreement thereto by District employees or agents, and any such agreements shall be null, void, and without effect unless properly executed by the District and incorporated into this DPA in a valid amendment hereto.

17. Severability

If any provision of this DPA is determined to be illegal or unenforceable, then that provision shall be modified to the minimum extent necessary to render such provision legal and enforceable, and all remaining provisions shall remain in full force and effect.

18. Choice of Law/Venue

This DPA is made and is performable in Texas and shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of Texas, without regard to choice of law principles. Any dispute arising from, related to, or in connection with this DPA shall be brought in a court of competent jurisdiction in Travis County, Texas, and the Parties hereby submit to and consent to the exclusive jurisdiction of said courts.

19. Headings

The headings in this DPA are for reference only and shall not affect the interpretation of this DPA.

20. Immunities

Nothing in this DPA shall be construed to create a claim or cause of action against the District for which it is not otherwise liable, nor to waive any immunity or defense to which the District, its trustees, officers, or employees may be entitled, nor to create an impermissible deficiency debt of the District.

21. Health Insurance Portability and Accountability Act

If the District determines that the Vendor, its employees, subcontractors, or agents will access, maintain, use, or disclose "protected health information" subject to the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5) ("HITECH"), and/or the Texas Medical Records Privacy Act, Tex. Health & Safety Code Ann. § 181.001 *et seq.* ("TMRPA"), in addition to and as part of the terms and conditions of the Agreement and this DPA, the Parties agree to enter into a Business Associate Agreement, in form and substance reasonably agreeable to both Parties, providing for the privacy and security of such protected health information as required by HIPAA, HITECH, and the TMRPA, as such laws may be amended from time to time by the authorities having jurisdiction thereof.

IN WITNESS WHEREOF, the Parties have executed this DPA as of the Effective Date of the Agreement.

VENDOR: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

EANES INDEPENDENT SCHOOL DISTRICT

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT A to DATA PROTECTION ADDENDUM

Other types or categories of District Data:

[INSERT LIST, DATA FIELD, ETC. OR "None"]

PART 9.0 – GENERAL TERMS AND CONDITIONS

The words “bid,” “requests for proposal,” “quote,” “RFP,” “solicitation,” “procurement,” and their derivatives may be used interchangeably in these terms and conditions. These general terms and conditions apply to all bids, requests for proposals, quotes, competitive sealed proposals, and other purchasing solicitations to which they are attached. The term “Vendor” means each awarded vendor chosen by the District.

These general terms and conditions are part of the final contract in each product and/or service contract (each, an “Agreement”) and are part of the terms and conditions of each purchase order or other bid/proposal forms issued in connection with this solicitation.

9.1 Certifications

- a. Vendor hereby certifies that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.
- b. If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) the Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the “Vendor Companies”), boycotts Israel, and the Contractor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of the Agreement. For purposes of the Agreement, the term “boycott” shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

9.2 Compliance with Laws

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers’ compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations, the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland “Anti-Kickback” Act (18 U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), the McNamara-O’Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h, Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), the Education Department General Administrative Regulations, 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81 (“EDGAR”), mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-

163, 89 Stat. 871), and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights and those mandated by federal agencies making awards of federal funds to the District. Vendor understands that Vendor is ineligible to receive a contract award with the District if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689) or is 30 days or more delinquent in paying child support (Tex. Fam. Code § 231.006). For the entire duration of the Agreement, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform the Agreement. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the District's Purchase Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. When required or requested by the District, Vendor shall furnish the District with satisfactory proof of Vendor's compliance with this provision.

9.3 Criminal History Review (SB 9 Contractor Certification: Contractor Employees Form; SB 9 Contractor Certification)

Prior to commencing any work under the Agreement, if Vendor contracts with District to provide services, Vendor must certify that for each covered employee of Vendor who will have direct contact with students, Vendor has obtained, as required by Texas Education Code Section 22.0834: (a) state criminal history record information from a law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) for each covered employee of Vendor employed before January 1, 2008; and (b) national criminal history record information for each employee of Vendor employed on or after January 1, 2008. Vendor must also obtain similar certifications of compliance with Texas Education Code Chapter 22's requirements from any subcontractors on the form provided herein. Covered employees with disqualifying criminal history are prohibited from serving at the District; Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Tex. Educ. Code § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor's employees from interacting with students or entering areas used by students. Tex. Educ. Code §§ 22.0834(a-1), .08341. The criminal history record information review obligation applies if Vendor contracts with District to provide services; it does not apply to a contract for the purchase of goods or real estate. All costs of the review shall be paid by Vendor. Any person or persons not acceptable to Eanes ISD shall be prohibited from working on the Agreement.

9.4 Equal Opportunity

It is the policy of the District not to discriminate on the basis of age, race, color, national origin, ancestry, sex or gender, religion, limited English proficiency, handicapping conditions, or any other basis prohibited by law in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of the Agreement, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), gender or sex (except where based on a bona fide occupational qualification), race, color, national origin, ancestry, religion, limited English proficiency, handicapping conditions, or any other basis prohibited by law. Vendor further agrees that every subcontract entered into for the performance of the Agreement shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Agreement.

9.5 District Property

In the event of loss, damage, or destruction of any property owned by or otherwise under the custody and care of the District that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify the District and pay to District the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of District's determination of the amount due. If Vendor fails to make timely payment, District may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by the District.

9.6 IRS W-9

In order to receive payment under the Agreement, Vendor shall have a current I.R.S. W-9 Form on file with the District.

9.7 New Products

New products that meet the specifications detailed in the solicitation may be added to the Agreement, with prior written approval from the District. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Vendor may replace or add products to an existing contract if: the replacing products are equal to or superior to the original products offered; are discounted in a similar or to a greater degree; and the products meet the requirements of the original solicitation. No products may be added to avoid competitive procurement procedures. The District may reject any proposed additions, with or without cause, in its sole discretion.

9.8 No Substitution

Any order issued pursuant to the Agreement shall conform to the specifications and descriptions identified in the Agreement and in the solicitation. Vendor will not deliver substitutes, unless otherwise agreed to in advance in writing by the District.

9.9 Penalties

If Vendor is unable to provide the goods or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Agreement, the District may take the following action(s), in District's sole discretion, and Vendor agrees to comply with the District's action(s):

- (a) insist that Vendor honor the quoted price(s) specified in Vendor's Proposal;
- (b) have Vendor pay the difference between Vendor's price and the price of the next acceptable Proposal (as determined by District);
- (c) have Vendor pay the difference between Vendor's price and the actual purchase price of the good or service on the open market; and/or
- (d) recommend to District's Board of Trustees that Vendor no longer be given the opportunity to submit a Proposal to the District and/or that the Agreement be terminated.

9.10 Performance

Vendor agrees to use best efforts to provide the good(s) and/or service(s) subject to the Agreement.

9.11 Prevailing Wage Rates

Vendor and all subcontractors of Vendor shall comply with all laws regarding wage rates including, but not limited to, Texas Government Code Chapter 2258 and any related federal requirements applicable to the Agreement and to this solicitation by District.

9.12 Prices

All prices in Vendor's proposal shall be firm for the Term of the Agreement. All permitted price changes shall be presented to District for acceptance or rejection by District, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for goods and/or services provided under the Agreement must be approved, in writing, by District prior to taking effect. The following documentation shall be provided to support a request for a price change: justification for change/increase; terms and conditions; market conditions; manufacturers/distributors' impact (if any).

9.13 Safety

Vendor, its subcontractors, and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under the Agreement, including, without limitation, those promulgated by District and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by District. **VENDOR SHALL INDEMNIFY AND HOLD DISTRICT HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES, AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF VENDOR'S OBLIGATIONS UNDER THIS PROVISION.**

9.14 Tax Responsibilities of Vendor and Indemnification for Taxes

Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to their operation and any persons employed by Vendor and all subcontractors of Vendor. Vendor shall require all subcontractors to hold District harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

9.15 Title and Risk of Loss

Whenever District is purchasing (and not leasing) an item under the Agreement, title and risk of loss shall pass upon the later of District's acceptance of the item or payment of the applicable invoice.

9.16 Workforce

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under the Agreement. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on District's property, nor may such workers be intoxicated or under the influence of alcohol or drugs on District's property.

9.17 Payment Terms

Unless a prompt payment discount with a payment term of at least 10 days is offered and accepted by Eanes ISD, payment terms shall be Net 45 days from date of acceptance or receipt of a properly prepared and submitted invoice, whichever is later. Vendor will invoice Eanes ISD neither more nor less frequently than once per month.

9.18 Independent Contractor

The parties intend that Vendor, in performing the specified services, will act as an independent contractor and that nothing herein shall be construed as creating the relationship of employer or employee between Eanes ISD and Vendor or between Eanes ISD and Vendor's employees. Vendor will be free to contract for similar services to be performed for other entities while Vendor is under contract with Eanes ISD. Vendor is not to be considered an agent or employee of Eanes ISD and is not entitled to participate in any pension plans, bonus, or similar benefits that Eanes ISD provides to its employees. Eanes ISD and Vendor agree that Vendor and/or its employees are not covered under any Eanes ISD insurance policy, including but not limited to Eanes ISD's liability, property and casualty, or workers' compensation insurance policies. Eanes ISD shall not deduct federal income taxes, FICA (Social Security), or any other taxes required to be deducted by any employer, as this is the responsibility of Vendor.

9.19 Fund Availability

The Agreement is contingent upon the continued availability of appropriations and is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by Eanes ISD's Board of Directors or otherwise not made available to Eanes ISD.

9.20 Unsatisfactory Performance by Vendor Staff

If any person employed by Vendor fails or refuses to carry out the services contemplated in the Agreement or is, in the opinion of Eanes ISD's designated representative(s), incompetent, unfaithful, intemperate, or disorderly, or uses threatening or abusive language to an Eanes ISD student, parent, or representative, or if otherwise unsatisfactory, he or she shall be removed from the work under the Agreement immediately and shall not again provide services to Eanes ISD except upon consent of Eanes ISD's authorized representative.

9.21 Enforcement

It is acknowledged and agreed that Vendor's services to Eanes ISD are unique, which gives Vendor a peculiar value to Eanes ISD and for the loss of which Eanes ISD cannot be reasonably and adequately compensated in damages. Accordingly, Vendor acknowledges and agrees that a breach by Vendor of the provisions of the RFP or the Agreement will cause Eanes ISD irreparable injury and damage. Vendor therefore expressly agrees that Eanes ISD shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of the RFP or the Agreement.

9.22 Governmental Immunity

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, VENDOR ACKNOWLEDGES, STIPULATES AND AGREES THAT NOTHING IN THE AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF ANY DEFENSE AVAILABLE TO EANES ISD, INCLUDING BUT NOT LIMITED TO ANY STATUTORY OR GOVERNMENTAL IMMUNITY FROM SUIT AND LIABILITY AVAILABLE TO EANES ISD UNDER APPLICABLE LAW.

9.23 Interpretation of Evidence

No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the RFP or Agreement. Acceptance or acquiescence in a course of performance rendered under the RFP or the Agreement shall not be relevant to determine the meaning of the RFP or the Agreement, even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

9.24 Applicable Law

The validity, enforceability, and interpretation of any provision of the RFP or the Agreement will be determined and governed by the substantive and procedural laws of the State of Texas, without regard to conflict of laws principles.

PART 10.0 – VENDOR’S EXCEPTIONS AND/OR SUBSTITUTIONS

This response must be attached to your complete Proposal. In this Part, please indicate all proposed exceptions and/or substitutions to the RFP, including the District’s prospective contract and/or the general terms and conditions of this solicitation. **Exceptions and/or substitutions considered by Eanes ISD as too general, unreasonable, or affecting vital terms, or any language to the effect that the vendor does not consider this RFP to be part of a contractual obligation, may reduce or eliminate vendor’s prospects for award.**

Vendor Legal Entity Name and DBA: _____

_____ Vendor DOES NOT have any exceptions and/or substitutions included for this bid event

_____ Vendor DOES have exceptions and/or substitutions included for this bid event (see details below)

Details: (Please list all exceptions and/or substitutions below or attach a separate sheet in the format provided)

	Reference to RFP Part and Section No.	EISD RFP Requirement	Vendor’s Proposed Exception and/or Substitution	Accepted or Rejected (FOR EISD USE ONLY)
1				
2				
3				
4				
5				

PART 11.0 – EXECUTION OF OFFER

Vendor Response to EISD RFP #202021-002 Software Products and Services

Vendor Information:

Company Name: _____
Remit to Payment Address: _____
City/Municipality: _____ State/Province: _____
Zip Code: _____ Country: _____
Web Address: _____
Contact Name: _____
Contact Email Address: _____
Submit Purchase Orders via Email: _____
Phone Number(s): _____
Please attach an updated W-9 to your response.

Vendor Certification:

I, the undersigned, submit this Proposal and have read the specifications, which are a part of this RFP. My signature also certifies that I am authorized to submit this Proposal, sign as a representative for Vendor, and carry out services solicited in this RFP.

Signature of Authorized Agent: _____

Printed Name and Title of Agent: _____

Telephone Number: _____

Email Address: _____

PART 12.0 – FORMS & CERTIFICATIONS

The vendor shall execute the required forms and certifications included with this RFP.

EDGAR VENDOR CERTIFICATION

When a Districts seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200.

A "NO" response to any of the items may, if applicable, impact the ability of the District to purchase from the Vendor using federal funds.

1. Vendor Violation or Breach of Contract Terms:

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when federal funds are expended by Eanes ISD, Eanes ISD reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

2. Termination for Cause or Convenience:

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when federal funds are expended by Eanes ISD, Eanes ISD reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Provider, in the event Provider fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Eanes ISD also reserve the right to terminate the contract immediately, with written notice to Provider, for convenience, if Eanes ISD believes, in its sole discretion that it is in the best interest of Eanes ISD to do so. The Provider will be compensated for work performed and accepted and goods accepted by Eanes ISD as of the termination date if the contract is terminated for convenience of Eanes ISD. Any award under this procurement process is not exclusive and Eanes ISD reserves the right to purchase goods and services from other providers when it is in the best interest of Eanes ISD.

3. Equal Employment Opportunity:

(C) Except as otherwise provided under 41 CFR Part 60, all Cooperative member purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when federal funds are expended by Eanes ISD on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

4. Right to Inventions Made Under a Contract or Agreement:

(D) If the Cooperative member's Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (D) above, when federal funds are expended by Eanes ISD, Proposer certifies that during the term of an award for all contracts by Eanes ISD resulting from this procurement process, Proposer agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

5. Clean Air Act and Federal Water Pollution Control Act:

(E) Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended –Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (E) above, when federal funds are expended by Eanes ISD, Proposer certifies that during the term of an award for all contracts by Eanes ISD resulting from this procurement process, Proposer agrees to comply with all applicable requirements as referenced in Federal Rule (E) above.

6. Debarment and Suspension:

(F) Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (F) above, when federal funds are expended by Eanes ISD, Proposer certifies that during the term of an award for all contracts by Eanes ISD resulting from this procurement process, Proposer certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

7. Byrd Anti-Lobbying Amendment:

(G) Byrd Anti-Lobbying Amendment (31 USC 1352) -- Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. As applicable, Vendor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

Pursuant to Federal Rule (G) above, when federal funds are expended by Eanes ISD, Proposer certifies that during the term and after the awarded term of an award for all contracts by Eanes ISD resulting from this procurement process, Proposer certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

8. Record Retention Requirements for Contracts Paid for with Federal Funds 2 CFR § 200.333:

(H) When federal funds are expended by Eanes ISD for any contract resulting from this procurement process, Proposer certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Proposer further certifies that Provider will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Pursuant to Federal Rule (H) above, when federal funds are expended by Eanes ISD, Proposer certifies that during the term and after the awarded term of an award for all contracts by Eanes ISD resulting from this procurement process, Proposer certifies that it is in compliance with all applicable provisions of the retention requirements detailed in 2 CFR § 200.333.

9. Certification of Compliance with EPA Regulations Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts in Excess of \$100,000 of Federal Funds

When federal funds are expended by Eanes ISD for any contract resulting from this procurement process in excess of \$100,000, Proposer certifies that Proposer is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

10. Certification of Compliance with the Energy Policy and Conservation Act

When federal funds are expended by Eanes ISD for any contract resulting from this procurement process, Proposer certifies that Proposer will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

11. Certification of Compliance with Buy America Provisions

Proposer certifies that Proposer is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

12. Certification of Non-Collusion Statement

Proposer certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Vendor Certification Item Number	Vendor Certification: YES , I agree or NO , I do NOT agree		Initial
1. Vendor Violation or Breach of Contract Terms	YES	NO	
2. Termination for Cause or Convenience	YES	NO	
3. Equal Employment Opportunity	YES	NO	
4. Right to Inventions Made Under a Contract or Agreement	YES	NO	
5. Clean Air Act and Federal Water Pollution Control Act	YES	NO	
6. Debarment and Suspension	YES	NO	
7. Byrd Anti-Lobbying Amendment	YES	NO	
8. Record Retention Requirements for Contracts Paid for with Federal Funds 2 CFR § 200.333	YES	NO	
9. Certification of Compliance with EPA Regulations Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts in Excess of \$100,000 of Federal Funds	YES	NO	
10. Certification of Compliance with the Energy Policy and Conservation Act	YES	NO	
11. Certification of Compliance with Buy America Provisions	YES	NO	
12. Certification of Non-Collusion Statement	YES	NO	

By signature below, I certify that the information in this form is true, complete, and accurate and that I am authorized by my company to make this certification and all consents and agreements contained herein.

Company Name

Signature of Authorized Company Official

Printed Name

Date

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Eanes Independent School District
601 Camp Craft Road, Austin Texas 78746

FELONY CONVICTION NOTICE

Senate Bill 1 passed by the State of Texas Legislators, Section 44.034, Notification of Criminal History, Subsection (a) states “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or owners or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the felony”

Subsection (b) states “a school district may terminate a contract with a person or business entity if the District determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract”. This disclosure is not required of a publicly-held corporation (option A).

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony conviction had been reviewed by me and the following information furnished is true to the best of my knowledge (select one answer).

Choose A, B or C

Vendor's Name: _____

Title: _____

A. My firm is not owned nor operated by anyone who has been convicted of a felony.

Signature: _____

B. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony (list names and titles): _____

Details of Conviction: _____

Signature: _____

C. My firm is a publicly-held corporation; therefore, this reporting requirement is not applicable.

Signature: _____

ALL VISITORS TO ANY EANES ISD BUILDING WILL BE REQUIRED TO PRESENT A PICTURE ID AND BE ENTERED INTO THE VISITOR MANAGEMENT SYSTEM IN ORDER TO RECEIVE A VISITOR'S PASS. **NO VISITOR WILL BE ALLOWED ENTRY WITHOUT A VISITOR'S PASS.**

Signature of Company Officer: _____

Date: _____

EANES ISD DATA PROTECTION AGREEMENT (“DPA”)

This DPA is made by and between _____ (“Contractor”) and Eanes Independent School District (“EISD”) as a condition of Contractor’s, its employees’ and agents’ (including subcontractors) access to, and use, maintenance, and disclosure of, District Data (as defined below) in connection with Contractor’s provision of products and services (collectively, “Services”) to EISD. This DPA is hereby made part of any agreement(s) between the parties with respect to the Services (each, an “Agreement”), notwithstanding any merger/integration or similar provision contained in any such Agreement(s), and Contractor and EISD agree as follows:

1. “District Data” means all information, including, but not limited to, business, administrative, financial, student, and personnel information, work product, and other intellectual property that is: (1) created by EISD, its employees, contractors, agents, affiliates, students, parents, and users, or provided or otherwise made available to Contractor, its employees and agents by EISD, its employees, contractors, agents, affiliates, students, parents, and users through the Services or otherwise in connection with the Services; or (2) gathered by Contractor, its employees and agents through the Services or other means (e.g., Contractor technology) in connection with the Services. District Data includes, but is not limited to, any information that is protected by law, such as “personally identifiable information” and student “education records” as those terms are defined under the Family Educational Rights and Privacy Act, 20 USC 1232g, as amended (“FERPA”). District Data does not include “de-identified” information as that term is defined by the U.S. Department of Education for purposes of FERPA.

2. All rights in and to District Data shall remain the sole and exclusive property of EISD. Contractor has no rights, implied or otherwise, in District Data, except as expressly stated in this DPA.

3. EISD hereby authorizes Contractor to access, use, and maintain District Data, and disclose District Data to its employees and agents, solely as reasonably necessary to provide Services to EISD, subject to the requirements of applicable law and this DPA. Contractor shall ensure that its employees and agents agree to comply with data protection obligations similar to, and in no event less restrictive than, those applicable to Contractor under this DPA and applicable law. Except as required by law or authorized by EISD in writing, Contractor, its employees and agents shall not disclose District Data to any third party. EISD shall have access to District Data at all times.

4. Contractor shall comply with all laws applicable to the access to, and use, maintenance, and disclosure of, District Data. Contractor acknowledges that it has been designated a school official with legitimate educational interests in any FERPA-protected information contained in District Data and agrees to abide by any requirements imposed by law on school officials. The parties agree that: (1) the Services are services/functions for which EISD would otherwise use its own employees; (2) Contractor meets the criteria in EISD's annual notification of FERPA rights for being a school official in connection with the Services; (3) Contractor is under EISD's direct control with respect to its access to, and use, maintenance, and disclosure of, FERPA-protected information; and (4) Contractor will access, use, maintain, and disclose FERPA-protected information only for the purpose for which it was disclosed and will not re-disclose such information to other parties unless Contractor has specific written authorization from EISD to do so and it is otherwise permitted by FERPA. EISD parents/guardians and students shall not be required to waive any FERPA rights in connection with the Services, and any such waiver shall be null and void.

5. Contractor shall use commercially reasonable security procedures and practices to preserve the confidentiality, integrity, and availability of District Data and protect it from unauthorized acquisition, access, use, or disclosure. Such measures shall be no less protective than those used to secure Contractor’s own data of a similar type. District Data shall not be stored outside the United States without EISD’s prior written consent. If Contractor suspects that District Data has been exposed to unauthorized acquisition, access, use, or disclosure, except as prohibited by law, Contractor shall immediately notify EISD, investigate the incident, and cooperate fully with EISD’s response to the incident.

6. Except as prohibited by law, Contractor shall notify EISD of any legal order or other demand seeking District Data prior to disclosing District Data in response thereto, and Contractor shall reasonably cooperate with EISD's efforts, if any, to protect District Data.

7. Contractor will promptly notify EISD of any change in Contractor's, its employees' or agents' circumstances that are reasonably expected to materially affect District Data, including, but not limited to, any assignment, transfer, or cessation of business or unlawful conduct, and shall reasonably cooperate with EISD's requests related thereto. This DPA shall be binding upon, and inure to the benefit of, Contractor's permitted successors and assigns, if any.

8. Upon the termination of any Services, or as otherwise requested by EISD in writing, Contractor shall ensure that: (a) all applicable District Data is promptly transferred to EISD as reasonably requested by EISD; and (2) all applicable District Data in Contractor's, its employees' and agents' possession is destroyed in a commercially reasonable manner (unless Contractor is expressly permitted by law to retain such District Data). Notwithstanding the termination of the Services or any Agreement(s), this DPA shall continue in full force and effect until all District Data in Contractor's, its employees' and agents' possession has been securely destroyed as required herein.

9. A material breach of this DPA shall constitute a material breach of the applicable Agreement(s), if any. Upon a material breach of this DPA, EISD may suspend or terminate Contractor's, its employees' and agents' access to District Data. If Contractor fails to cure such breach as provided under the applicable Agreement(s), if any, or within ten (10) days after receiving written notice thereof, whichever is later, EISD may terminate the Services and any applicable Agreement(s), without penalty, liability, or further obligation. The foregoing remedies shall be in addition to and without limitation of any other rights or remedies of EISD.

10. This DPA shall be governed by Texas law, without regard to choice of law principles. The mandatory and exclusive venue for any dispute related to this DPA shall be in the state or federal courts for Travis County, Texas, and the parties hereby consent to the jurisdiction of said courts.

11. In the event of a conflict between or among this DPA, any Agreement(s), and/or applicable law, the requirement that affords the most protection to District Data shall supersede and control.

IN WITNESS THEREOF, the Parties have executed this DPA effective _____.

CONTRACTOR: _____

EANES INDEPENDENT SCHOOL DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A to DATA PROTECTION DPA

Other types or categories of District Data:

List Inserted: Yes No

**You MUST check off at least one box and/or add description under
"Other types or categories of District Data" before signing.**

VENDOR: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

[INSERT LIST, DATA FIELD, ETC. OR "None"]

CERTIFICATION REGARDING TERRORIST ORGANIZATIONS & BOYCOTTING OF ISRAEL

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies know to have contracts with, or supply services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor affiliate, subsidiary, or parent company of Vendor, if any (the 'Vendor Companies'), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory. See Texas Government Code § 2270, 808 and 2252.151-2252.154.

Proposer Certification (Terrorist Organizations & Boycotting of Israel):

_____ **YES**, I agree to the above (Initial: _____).

_____ **NO**, I do NOT agree to the above (Initial: _____).

Vendor Name: _____

Address: _____

City/Municipality: _____ State/Province: _____

Zip Code: _____ Country: _____

E-mail Address: _____

Authorized Company's Official's Signature: _____

Print Company's Official's Name: _____

Title of Official: _____

Date: _____

EANES ISD

Insurance Requirements for Firms - Not Applicable for Independent Contractors

Any vendor or contractor working on Eanes School District facilities or property must provide the required insurance. Any large equipment or vehicles brought onto Eanes School Property must also provide the required insurance.

- Minimal coverage should be \$1,000,000 for general liability, each occurrence.
- Minimal coverage should be \$500,000 for automobile liability, each occurrence.
- Minimal coverage should be \$100,000 for workers compensation, each occurrence.
- Policy must be currently in effect during the time of contracted work.
- Additional Insurer must be:

Eanes ISD, its officers, employees and agents.

- Certificate Holder must name:

Eanes Independent School District
601 Camp Craft
Austin, TX 78746

- Certificate of Insurance on an ACORD form shall be faxed to 512-732-9056 or emailed to mgreer@eanesisd.net, **and a hard copy original must follow by mail from the insurance company to:**

Matt Greer
Director of Safety and Risk Management
Eanes ISD
601 Camp Craft
Austin, TX 78746

If the district does not receive your insurance certificate within two weeks of your application being approved, your application will no longer be valid.

Signature: _____ Date: _____