



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

**REQUEST FOR PROPOSALS (RFP)**  
**Athletic Supplies & Services**  
**RFP # 201819-002**

The Eanes Independent School District (“District”) invites qualified companies to submit Proposals for Athletic Supplies & Services. This Request for Proposal can be reviewed and downloaded at the following website:

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

If you are an interested company, the District invites your firm to submit a Proposal Response via email to the EISD Purchasing Office at [purchasing@eanesisd.net](mailto:purchasing@eanesisd.net). While electronic submissions are preferred, you may still mail your response to the address listed above. The subject line or envelope for your Proposal Response should be plainly marked:

**RFP # 201819-002 Athletic Supplies & Services**

Awards will be made to multiple vendors during the Solicitation offering period. Vendors are encouraged to submit responses as soon as possible. As proposals are received they will be evaluated and either accepted or rejected by the District. Applicants will then be notified of the District’s decision. Proposal responses will be accepted through **Wednesday November 7, 2018 at 2:00PM.**

THIS IS A NEGOTIATED PROCUREMENT, and as such, the District reserves the right to negotiate any terms, conditions, or pricing with a proposer prior to an award. The Board of Trustees reserves the right to reject any and/or all Proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interest of the District.

No Proposals may be withdrawn for a period of ninety (90) days subsequent to the deadline for receipt of Proposals without the prior written consent of the Board of Trustees, Eanes Independent School District.

Sincerely,

*Sylvie Pouget*

Sylvie Pouget  
Purchasing Coordinator, Eanes ISD



**SCOPE**

Eanes ISD is accepting Proposals for multiple award contracts for Athletic Supplies & Services for the 2018-2019 school year in accordance with the instructions, terms and conditions, and requirements/specifications contained in this Solicitation.

**TIMELINE**

Monday, October 1, 2018	RFP Issued
Wednesday, November 7, 2018 by 2:00PM	RFP Deadline (proposals accepted through this date)

**CHECKLIST**

**ITEMS TO BE PROVIDED WITH ALL PROPOSAL SUBMITTALS**

- **Cover Letter**
- **Attachments/ Exhibits in Section V** must be reviewed, signed and returned.
- **References.** List of three references (preferably school districts) that we may contact, including detailed explanation of experience in similar engagements.
- **Online Catalog.** Include a link to your online catalog. If online catalog is unavailable, please send a hard copy.
- **Pricing.** Your pricing must be on the form provided, as Section IV along with any supporting documentation you feel is necessary.



## SECTION I General Instructions

1. **Description:** Eanes Independent School District (“EISD” or the “District”) is accepting Proposal Responses for a multiple award contract for Athletic Supplies & Services in accordance with the instructions, terms and conditions, and requirements/specifications contained in this Solicitation.
2. **Submission of Proposals:**
  - 2.1 Electronic responses sent to [purchasing@eanesisd.net](mailto:purchasing@eanesisd.net) are the preferred method of submission. **Subject should read: RFP #201819-002 Athletic Supplies & Services.**
  - 2.2 Mailed proposals are to be sealed in an envelope marked on the outside with the Proposer’s name, address and Proposal number and returned to the following address in sufficient time so as to be received and time stamped on or before the time and date shown on this Solicitation:  
  
**Eanes Independent School District  
RFP 201819-002 Athletic Supplies & Services  
601 Camp Craft Road  
Austin, TX 78746  
Department**  
  
**ATTN: Purchasing**
  - 2.3 Proposals shall represent a true and correct statement and shall contain no cause for claim of omission or error.
  - 2.4 Proposals will not be considered unless the Proposal is physically received within the Purchasing Department at the address listed above prior to Proposal opening.
  - 2.5 Late Solicitation Responses will not be considered under any circumstances.
3. **Questions:**
  - 3.1 Any explanation desired by a Proposer regarding the meaning or interpretation of this Solicitation, or any forms included herein, must be requested in writing to [spouget@eanesisd.net](mailto:spouget@eanesisd.net) with sufficient time allowed for a reply to reach Proposers before the submission of a Proposal.
  - 3.2 Verbal requests for clarification will not be binding and will not be made part of the proposal documents.
  - 3.3 No contact shall be made with the District unless specifically authorized by the Purchasing Coordinator. Failure to comply with this requirement may be grounds for rejection of a Solicitation Response.
  - 3.4 All interpretations or clarifications considered necessary by and approved by the District, in response to Proposer’s requests, will be issued in the form of an Addendum.
4. **Proposal Response:**
  - 4.1 The District will be accepting Proposal Responses through **Wednesday, November 7, 2018 at 2:00 PM.**
  - 4.2 Proposals must contain:



- 4.2.1 The Proposal Response Form in Section IV in its entirety;
  - 4.2.2 Certifications/ Representation Documents;
  - 4.2.3 Vendor Catalog (electronic preferred);
  - 4.2.4 Any additional documents required by the Solicitation;
  - 4.3 **W-9 Proposer Identification Number Certificate.** Proposer shall submit with their Proposal Response a copy of a W-9 Proposer Identification Number Certification to expedite the payment process if awarded a contract.
  - 4.4 The District reserves the right to reject any Proposal Responses that the District considers inappropriate. The District shall also be the sole judge of acceptable Proposal Responses.
  - 4.5 Proposals submitted are encouraged to be in typewritten or in print format. Due to the high volume of responses, any illegible proposals may be rejected.
  - 4.6 **Withdrawal of Proposals.** Any Proposer who is extended the privilege of withdrawing a Proposal because of having proven mechanical error in his or her Proposal may not be allowed to submit a Proposal on similar items for a period of one year unless the Superintendent waives this prohibition.
- 5. General Terms, Conditions and Requirements for Solicitations.** This Solicitation shall be governed by the following documents unless an exception is otherwise taken within this Solicitation. Documents are incorporated by reference only, and are not attached as part of this Solicitation. A copy may be obtained by contacting the Purchasing Coordinator.
- 5.1 Texas Education Code 44.031.
  - 5.2 Purchasing and Acquisition, EISD Policy CH (Legal).
  - 5.3 Purchasing and Acquisition, EISD Policy CH (Local).
- 6. Term of Contract.**
- 6.1 Contracts created by this Solicitation shall be in effect from the date of award through June 30, 2019.
  - 6.2 Eanes ISD reserves the right to extend the contract at the District's sole option for 4 (four) additional one year periods.
  - 6.3 All extensions will be done in writing prior to the end of the current contract.
- 7. Evaluation, Negotiations and Award.**
- 7.1 Each Proposal Response will be evaluated based on the requirements set forth in Section II, Special Instructions.
  - 7.2 Vendors are encouraged to submit proposals as soon as possible.
  - 7.3 Awards will be made to Proposers that have received an acceptable evaluation rating on all criteria.
  - 7.4 Preference will be given to those responses that offer discounts off catalog pricing as well as prompt payment discounts.
  - 7.5 As Proposals are accepted by the District, individual awardees will be notified.
- 8. Type of Contract.** Firm-Fixed Discount. Discounts shall remain firm for the life of the contract, unless agreed upon in writing by Purchasing Department (see Section II, Paragraph 2.9).

**End of Section I**



## SECTION II SPECIAL INSTRUCTIONS

The following information is to provide the Proposer with the needed information on how to complete and submit their Proposal Response.

### 1. Rules of Preparation.

- 1.1 Discounts offered in the Proposal shall remain fixed and binding for the life of the contract.
- 1.2 EISD expects that the Proposer will comply with the stated requirements of the RFP in developing their response. The Proposer will submit a proposal response consistent with EISD's RFP. Only those features that are directly related to Athletic Supplies & Services are to be included in the Proposal Response.
- 1.3 Any exception to the RFP terms and conditions shall be included in writing in the Proposer's Response.

### 2. Pricing.

- 2.1 It is the intent of this solicitation to establish a discount from catalog or published price list for each of the Category of Items listed in Section IV, Item 3. Failure of Proposer to indicate at least one category will be considered non-responsive.
- 2.2 Proposers must indicate a primary discount, but may offer multiple discounts by category. Leaving the Cost Proposal Section blank may be grounds for disqualification.
- 2.3 For any proposals indicating a discount range, the District will adopt the highest percentage listed as the fixed, firm discount in consideration of award.
- 2.4 Any proposals indicating "call for quotes" instead of a primary discount percentage will be considered non-responsive to this solicitation.
- 2.5 The percentage discount offered will be based on the current published catalog and pricing will remain firm until a new catalog is published and delivered.
- 2.6 The discount percentage will remain firm during the length of the contract, and any extension periods.
- 2.7 Catalog or price list shall be published in some form, shall be available to, and recognized by the trade.
- 2.8 A price list especially prepared for this solicitation will not be accepted.
- 2.9 Prices for this RFP cannot be increased for 30 days after the contract begins. In order to change a price list or catalog, a new or amended price list or catalog must be submitted to the Purchasing Department by the Proposer and approved by the Purchasing Department prior to the requested price change. Otherwise, the last EISD approved price list or catalog remains in effect until such time that EISD approves the price change.
- 2.10 Price reductions shall be offered immediately upon becoming available to a vendor after award.

### 3. Catalogs.

- 3.1. Electronic catalogs are preferred, if one is not available, please send catalog with your response.
- 3.2. EISD reserves the right to decline proposals from Proposers that cannot provide a catalog (printed or on-line) to the campuses and departments of the EISD.



**4. E-Commerce.**

- 4.1. The Proposer is to provide in the proposal a detailed explanation of the Proposer's e-commerce capabilities (on-line web based – accessible via an internet browser). This should include, but not be limited to, the following information'
  - 4.1.1. Online catalog location (URL address)
  - 4.1.2. Minimum system requirements (including browser)
  - 4.1.3. Technical assistance
  - 4.1.4. Ordering assistance
  - 4.1.5. General operation/use procedures and requirements
  - 4.1.6. Security
  - 4.1.7. Interface with Skyward
- 4.2. If a Proposer does not currently have on-line web based capabilities they are to state "Not Available" on the Proposal Response Form. If on-line capabilities are planned, please include details and date of availability to the District.

**5. Evaluation Process.**

- 5.1. Upon receipt of proposals, the District's Evaluation Team will review the proposals and may request additional information, as deemed appropriate.
- 5.2. Award will be made to Proposers based on the following requirements. Proposers not meeting the requirements will be deemed non-responsive and will not receive award under this solicitation.
  - 5.2.1. Cost Proposal Section, preference will be given to those vendors who offer the greatest discount.
  - 5.2.2. Prompt Payment Discount, preference will be given to those vendors who offer prompt payment discounts.
  - 5.2.3. Category Selection of the Proposal Response Form, indicating at least one proposed Category (a minimum of one category selection is required).
  - 5.2.4. Current electronic or printed catalog clearly describing items offered and ordering information with clearly identified pricing.
  - 5.2.5. Vendor References.
  - 5.2.6. All forms in Section V.
- 5.3. The District reserves the right to accept or reject any or all proposals as may be deemed in the best interest of the District.

**6. Award.**

- 6.1. Awards will be made throughout the open period of this Solicitation.
- 6.2. Awards will be made upon acceptance of Proposal.
- 6.3. Each Vendor will be contacted via e-mail of their approval. **No contact with the campuses or departments shall take place until receipt of approval.**

7. **No Guarantee of Orders.** At this time, there are no definite items and/or quantities to be ordered. EISD is not required to purchase any minimum or maximum quantity of items.

**End of Section II**



### SECTION III Scope of Services

EISD is seeking to establish an agreement with one or more Businesses, Public or Private Organizations, or other entities that wish to provide Athletic Supplies & Services to the District.

#### 1. District Overview.

- 1.1 EISD covers an area of approximately 31.2 square miles and includes parts of Austin as well as the municipalities of Rollingwood and Westlake Hills.
- 1.2 A map of the District is available at the following District website address:  
<https://www.eanesisd.net/district/maps>
- 1.3 EISD currently has one (1) high school, two (2) middle schools, six (6) elementary schools, one (1) administration building, one (1) maintenance center, one (1) transportation center, and one (1) warehouse.

#### 2. Catalogs.

- 2.1 The successful Proposers will be provided a list of District campus and department addresses upon award of contract. Proposer shall supply each campus and department with a paper copy catalog, on-line catalog, or CD/other media catalog within two weeks after notification of award of contract.
- 2.2 Catalogs specific to certain grade levels (i.e., K-5) should only be distributed to the appropriate campuses.
- 2.3 Distribution of catalogs to campuses and departments must be followed at each catalog update.

#### 3. Reports. The Proposer may be requested to provide reports detailing the following information:

- 3.1 Number of orders issued by campus/department.
- 3.2 Items being ordered.
- 3.3 Dollar amount of each order.
- 3.4 Total expenditure for District by campus/department.

#### 4. Orders and Delivery.

- 5.1 Schools and Departments will be issuing individual purchase orders for items purchased.
- 5.2 EISD will not be responsible for any goods delivered or services performed without and properly executed purchase order.
- 5.3 All orders shall be packaged and delivered to the address indicated on the Purchase Order during normal school hours and shall be plainly marked with the proper EISD purchase order number.
- 5.4 Backorders shall be delivered within forty-five (45) days from receipt of the original order unless otherwise indicated on the Purchase Order or notified by District personnel.
- 5.5 All exchanges and returns will be handled by the ordering campus/department.

#### 5. Invoicing and Payment.

- 6.1 Invoices should be submitted showing the list price of each individual item with the discount being applied against the total of the order.
- 6.2 Invoices shall be sent to [accountspayable@eanesisd.net](mailto:accountspayable@eanesisd.net).



- 6.3 Payment terms will be Net 30 days unless otherwise authorized by the District or a prompt payment discount has been offered.
- 6.4 Payment period does not commence until receipt and approval of wither the product or properly prepared invoice by the ordering campus/department.

**End of Section III**

**SECTION IV  
Proposal Response Form**

If a parent company is submitting more than one subsidiary company, a separate Proposal should be submitted for each company name. Multiple catalogs, with the same discount percentage, may be submitted under one company name.

**1. Cost Proposal Section**

Title of Catalog	Date of Catalog	% Disc. Offered

Special Conditions

Shipping Terms

Items in your catalog but not offered at a discount must be clearly identified above in the Special Conditions.





2. Vendor Information

Company Name: \_\_\_\_\_

Remit to Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Web Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

2.1 Company Information

Does your company accept Purchase Orders as a payment method? \_\_\_ Yes \_\_\_ No

Can Purchase Orders be sent via e-mail? \_\_\_ Yes \_\_\_ No

If yes, e-mail \_\_\_\_\_

Does your company offer on-line ordering with Purchase Order as a payment option?  
\_\_\_ Yes \_\_\_ No

Does your company interface with Skyward as an E-Commerce vendor? \_\_\_ Yes \_\_\_ No

2.2 Describe your E-Commerce capabilities including any on-line catalog and requirements for use. Include system requirements, set-up information, and continuing support offered. Include any 3<sup>rd</sup> party E-Commerce provider that may offer your catalog through its services:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



2.3 Please explain return policy:

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**3. Prompt Payment Discount**

Discount %	Discount Days Due	Standard Days Due

**4. Product Category** – Please indicate all sports that apply.

- Baseball/ Softball**
- Basketball**
- Football**
- Golf**
- Soccer**
- Swimming**
- Tennis**
- Track/ Cross Country**
- Training**
- Volleyball**
- Wrestling**
- Other(s)** \_\_\_\_\_

**5. Vendor References**

The Proposer is to submit three (3) references that have contracted with their company to provide like products and/or services. It is recommended that the Vendor show school districts or other local government organizations equal to EISD in size and structure, if possible. To expedite the



contract award, e-mail is the preferred method of contact. Note: Failure to supply complete reference information may be grounds for Proposal disqualification.

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_



## 6. Proposer's Certification

The undersigned, by his/her signature, represents that he/she is authorized to bind the Proposer to fully comply with the terms and conditions of this Proposal Solicitation, including all forms and attachments included and/or referenced herein, for the amount(s) shown on the accompanying Proposal form(s).

Proposer's Signature \_\_\_\_\_ Date \_\_\_\_\_

Proposer's Printed Name \_\_\_\_\_

**End of Section IV**

## **SECTION V Certifications/Representations**

1. Suspension or Debarment Certificate
2. Certificate of Residency
3. Conflict of Interest Questionnaire
4. Felony Conviction Notice
5. HB 1295 Form
6. CTPA Adoption Clause
7. Data Protection Addendum
8. W9

All of the above need to be included in response. Proposals with missing forms or incomplete forms might be labelled unresponsive, and therefore will not be considered.

## SUSPENSION OR DEBARMENT CERTIFICATE

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00 contractors receiving individual awards for \$100,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, the bidder:

1. Certifies that the owner/operator has not been convicted of a felony except as indicated on separate attachment to this offer, in accordance with Section 44.034 of the Texas Education Code, and
2. Certifies that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, Common Rule (\_\_\_\_.36)

Vendor Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ Fax Number: (    ) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Authorized Company Official Signature: \_\_\_\_\_

Please Print Company Officials Name: \_\_\_\_\_

Title of Official: \_\_\_\_\_

Date: \_\_\_\_\_

## CERTIFICATE OF RESIDENCY

The State of Texas has passed a law concerning non-resident contractors. This law can be found in Texas Government Code under Chapter 2252, Subchapter A.

This law makes it necessary for Eanes ISD to determine the residency of its bidders. In part, this law reads as follows:

Section: 2252.001

(3) 'Non-resident bidder' refers to a person who is not a resident.

(4) 'Resident bidder' refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Section: 2252.002

A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest proposal submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located."

I certify that

\_\_\_\_\_

(Name of Company Bidding)

is, under Section: 2252.001 (3) and (4), a

\_\_\_\_\_ Resident Bidder      \_\_\_\_\_ Non-resident Bidder

My or Our principal place of business under Section: 2252.001 (3) and (4), is in the city of

\_\_\_\_\_ in the state of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Authorized Company Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

## FORM CIQ

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).

Vendor’s Name: \_\_\_\_\_

Authorized Company Officer’s Name: (please print) \_\_\_\_\_

Title: \_\_\_\_\_

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

Signature of Company Officer: \_\_\_\_\_

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

Signature of Company Officer: \_\_\_\_\_

**C.** 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 of Company Officer: \_\_\_\_\_

**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: \_\_\_\_\_

## Implementation of House Bill 1295

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

The link above will take you to the required new Form 1295 Certificate of Interested Parties Electronic Filing Application available on the Texas Ethics Commission (TEC) website.

This contract required Eanes ISD Board approval due to the dollar amount. Please forward certificate number with signed contract. Please know that Eanes ISD officer will not sign contract until certificate has been downloaded by District.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

**OFFICE USE ONLY**

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

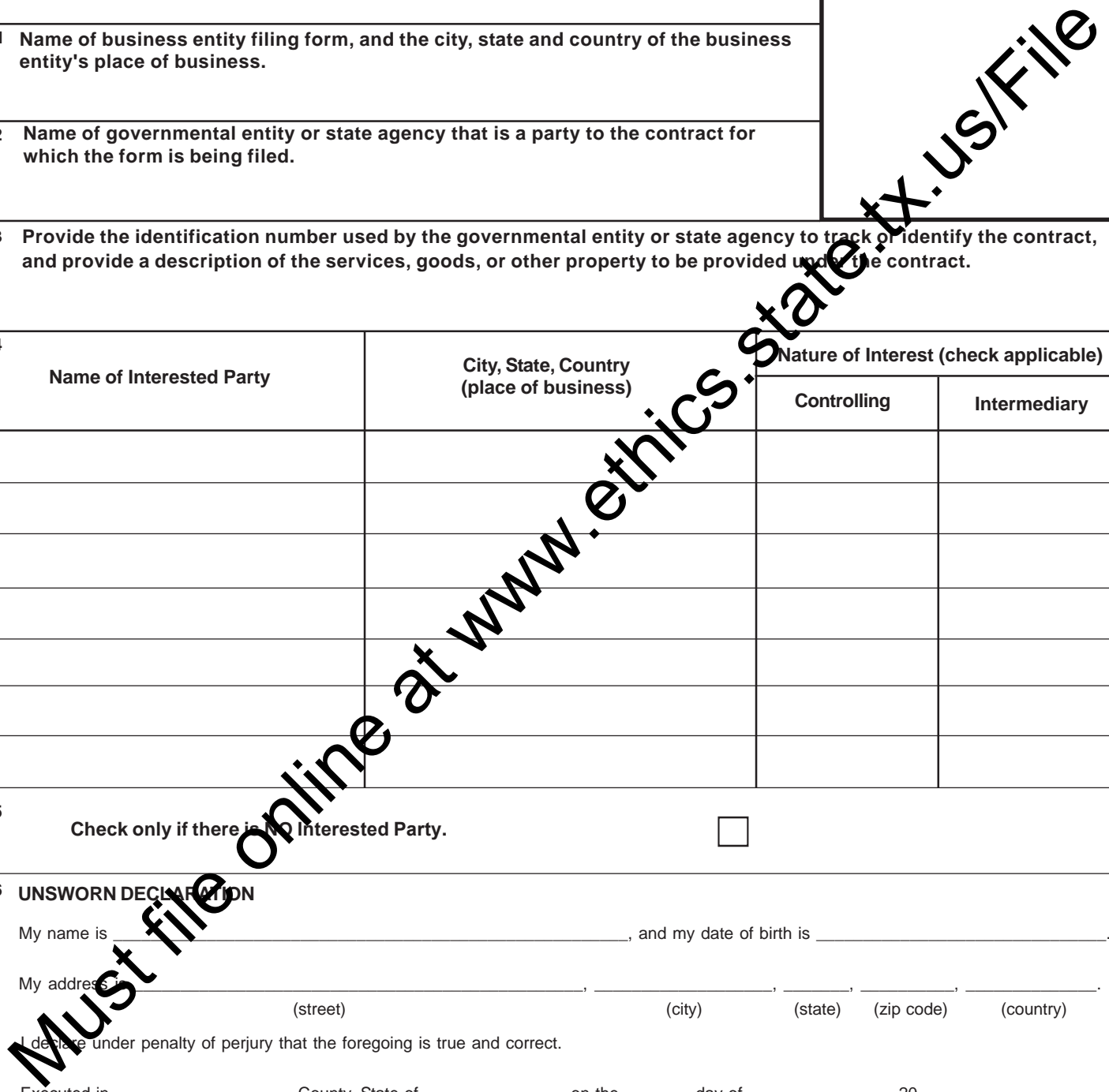
My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)

**ADD ADDITIONAL PAGES AS NECESSARY**



**CENTRAL TEXAS PURCHASING ALLIANCE ADOPTION CLAUSE**

**USE OF CONTRACT(S) BY MEMBERS COMPRISING THE CENTRAL TEXAS PURCHASING ALLIANCE (CTPA).**

- A. If authorized by the Vendor(s), resultant contract(s) may be adopted by the member districts of the CTPA as indicated below. Authorized members may purchase goods and/or services in accordance with contract pricing and purchasing terms established by the Contract Lead District.
- B. A list of members that may utilize the Vendor’s contract is listed on the CTPA website, <http://www.txctpa.org/memberlist/>.
- C. Any district member wishing to utilize such contract(s), will contact the Vendor to verify that the contract is available to them and will place its own order(s) directly with the successful Vendor. The Successful Vendor may contact the member districts to inform them about the contract award. There shall be no obligation on the part of any participating district to utilize the contract(s).
- D. A negative reply by the Vendor will not adversely affect consideration of the Vendor’s Solicitation response.
- E. Each participating district has the option of executing a separate contract with the successful Vendor, which may contain general terms and conditions unique to that contracting district. If, when preparing such contract, the general terms and conditions of a district are unacceptable to the successful Vendor, the successful Vendor may withdraw its extension of their offer to that district.
- F. The Contract Lead District shall not be held liable for any costs or damages incurred by another district as a result of any award extended to that district by the Successful Vendor.

BY SIGNATURE BELOW, THE VENDOR HEREBY AUTHORIZES THE MEMBER DISTRICTS AS INDICATED BELOW TO ADOPT ANY CONTRACT RESULTING FROM THE VENDOR’S RESPONSE TO THIS SOLICITATION:

- \_\_\_\_\_ YES
- \_\_\_\_\_ NO
- \_\_\_\_\_ YES, with the exception of the following districts:

---

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Vendor Name: \_\_\_\_\_

Printed Name of Authorized Company Official: \_\_\_\_\_

Signature of Company Official: \_\_\_\_\_

Date: \_\_\_\_\_

## DATA PROTECTION ADDENDUM

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 [RFP 201819-002 Athletic Supplies & Services] between the Parties dated [If Vendor is Approved by the EISD Board the effective date will be November 28, 2018] (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.

**VENDOR:** \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EANES INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A to DATA PROTECTION DPA**

Other types or categories of District Data:

[INSERT LIST, DATA FIELD, ETC. OR “None”]