Standard General Terms and Conditions

Garland ISD ("District") has adopted Standard General Terms and Conditions, which govern purchases made by Garland ISD and the relationship between the District and Offeror and are hereby made part of the Agreement/Contract between the parties. "Offeror" refers to the firm/company submitting a response to a solicitation by the District. After acceptance of the Offer and a resulting Contract, "Offeror" will become synonymous with "Vendor", "Contractor", "Provider", or similar title. "Offer" refers to a response to a solicitation for an Offer-i.e., "Bid" for an IFB/RFB; "Proposal" / "Qualifications" for RFP/RFQ; "Offer" for RFO; or "PO" for Purchase Order. These terms apply as incorporated by reference into solicitations, contracts, and purchase orders.

The District is **exempt from Texas State and Local Sales Tax and Federal Excise Tax** in accordance with Article 20.04 (F) 3, Chapter 20, Title 122a, Taxation, General, RCS, 1925, as amended by the 57th Legislature, First Called Session, 1961- DO NOT INCLUDE TAX IN BIDS OR PROPOSALS OR CONTRACTS.

Sales Tax Exemption.

- **a.** The Vendor shall be held to have studied all tax laws for the State of Texas, the County of Dallas, Texas, and the City of Garland or other municipality having jurisdiction and shall pay all taxes for which the Vendor may be held liable as a consumer or user of goods, or otherwise without addition to the Agreement price. The Vendor shall pay all sales, consumer, use, and other similar taxes required by law.
- **b.** The District is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Vendor may provide an exemption certificate in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment used or consumed, and other tangible personal property incorporated into the property being improved by virtue of this Agreement, as well as all materials, supplies, equipment, another tangible personal property used or consumed by the Vendor in performing this Agreement with the District. The Vendor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

Title to all items purchased under a resale certificate shall vest in the District at the time of initial possession by the Vendor and shall only be used in the performance of this Agreement. The vendor shall cause such items to promptly be marked, labeled, or otherwise physically labeled as District's property. The vendor shall cause items purchased under a resale certificate to send the receiving ticket to the District to be added to inventory before use by the Vendor. Any tangible personal property purchased under a resale certificate as described above and not fully used up in the performance of the Agreement shall remain with the District.

The District is afforded a degree of **sovereign immunity** under various statutes. The District does not intend to surrender or reduce any of its sovereign or contractual rights provided under Federal and/or Texas statute(s) and any attempt at any time during the Contract process, or Contract effective dates, by the Offeror or any third-party to do so is null and void.

The District is an equal opportunity educational provider and employer and does not discriminate based on race, color, religion, sex, national origin, disability, sexual orientation, gender expression, gender identity, and/or age in educational programs or activities that it operates or in employment decisions. The District is required by Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Age Discrimination Act of 1975, as amended, as well as Board Policies not to discriminate in such a manner. (Not all prohibited bases apply to all programs).

1. **The following subparagraphs apply generally to solicitations, responses to solicitations (i.e., Offers), evaluation, and Contract award; however, remedies, representations, and performance-type requirements apply during Contract performance:**

   - **a. SUBMISSION OF OFFER.** Submission of a response to an RFP, IFB, RFO, or similar solicitation document shall be considered as the representation that the Offeror has carefully read all aspects of the solicitation document and has investigated all past, present, and required conditions, including material and labor markets, of the goods or services being offered in the solicitation and freely submits an Offer. Failure of Offeror to examine the specifications, standard provisions, and/or all instructions will be at Offeror's risk.
   - **b. RESPONSIVENESS.** It is the Offeror's responsibility to read and comply with the information provided. Failure to complete and submit the bid/proposal according to the information and instructions may result in Offeror being declared "non-responsive" and being disqualified from further consideration.
   - **c. SEALED SUBMISSION OF OFFER.** The offeror may submit its Offer online through our electronic system or manually. If the Offer is submitted manually, the offeror should submit its Offer in a sealed envelope, plainly marked with Offeror's name, Bid/Proposal number,

receipt/opening date, and time. Offers may be mailed or delivered; however, the Offers should be in an envelope as noted above regardless of delivery method.

d. **LATE SUBMISSION.** Offers received after the time and date specified will not be accepted. The following applies only to manual offers; offers must be submitted in sufficient time to be received and time-stamped at the Purchasing Department on or before the Offer Receipt/Opening Time and Date. The District will not be responsible for delivering mail from the post office.

e. **SIGNATURE BLOCK.** Offers received without a proper signature will not be accepted. Signatures of the Parties transmitted by electronic means shall be deemed to be their original signatures for all purposes.

f. **FACSIMILE (FAX) AND EMAIL OFFERS.** Facsimile (fax) and email bids/proposals will not be accepted unless otherwise noted elsewhere in the solicitation.

g. **PRICES/COMMENTS IN INK AND UNIT PRICE EXTENSIONS.** All prices and comments must be typed or written in ink. Offers written in pencil will not be accepted. Mistakes may be crossed out, and corrections inserted and initialed by Offeror. Unit prices should include extended prices. The unit price will prevail in the resolution of mathematical errors in the extended price or the total. The offeror must submit prices and other information required in the proper spaces on the offer forms provided. The deviation may result in disqualification of the Offer.

h. **ESTIMATE OF REQUIREMENT.** The quantities stated elsewhere in the solicitation documents (IFB, RFP, RFO, etc.) are an estimate of use ONLY unless clearly stated in the Statement of Work. The District makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract unless stated in the Statement of Work. Specific quantities will be noted on subsequent Purchase/Delivery Orders or equivalent documents issued under this Contract. If the District's requirements do not result in orders in the quantities described as "estimated" in the minimum specifications, that fact shall not constitute the basis for an equitable price adjustment. The District is not required to purchase requirements in excess of the estimated quantity on any item from the Offeror.

i. **DISCOUNTS**. Offerors are encouraged to offer discounts for quantity buys, timeliness of buys, and/or prompt payment incentives as "value-adds". The conditions for earning the discount may be indicated by the item being offered or by submitting a separate page with the information. These discounts may be considered in determining the low Offer and will be part of any contract issued.

j. **DISCOUNT PURCHASES.** If the solicitation is for discount purchases instead of fixed prices, zero (0) percent discounts will generally not be considered for contract award. The District may select 3 to 5 of the most qualified/responsive submissions offering the most competitive pricing. Offerors must submit a catalog or price list, if applicable, with the Offer for evaluation purposes. Failure to submit a catalog may result in disqualification. Contracts/Agreements shall be awarded to the Offerors, as determined by the District, offering the most competitive pricing based upon a comparative analysis of each Offeror's manufacturer/catalog pricing.

k. **IDENTICAL OFFERS.** In the event, identical Offers (i.e., tied "bids") are received, based on the best value, responsible, responsive Offer price, and other factors considered, the Garland ISD will select one Offeror as the successful Offeror. If one of the Offerors submitting the identical proposal is a resident of the District, that Offeror shall be selected. If two or more such Offerors are residents of the District, one shall be selected by the casting of lots. In all other cases, one of the identical Offers shall be selected by casting of lots.

l. **CONTRACT RIDERS.** All School Districts, with a Board approved interlocal agreement with the District expressing an interest in riding the contract resulting from this solicitation, may do so with written notification. Please indicate if contract pricing and terms will NOT be extended to these districts. The District may assess a nominal administrative fee to the interested parties upon request. The district assumes no responsibility in the evaluation and award of any contract that results from this rider. Any contract resulting from this rider is strictly between the individual School Districts and the Offeror.

m. **ACKNOWLEDGEMENT OF AMENDMENTS/ADDENDA.** Changes to the solicitation document (IFB, RFP, RFO, etc.), statement of work, specifications, or similar substantial changes, prior to award, may be made in the form of an addendum. Each addendum must be returned with the signed Offer and with any other addendum at the time and date of the solicitation opening or prior to that time. If the addendum is not returned, the Offer may be disqualified.

n. **ALTERNATIVE BIDS.** This subparagraph is specific to a "Bid" (i.e., an Offer to an IFB or RFB). No alternate Bid will be accepted unless otherwise stated in the solicitation. Submission of an alternate or taking exceptions to the IFB/RFB (including, but not limited to, the Statement of Work; Specifications; and General Terms and Conditions) may result in the Offer being declared "non-responsive" and not being further considered for award.

o. **CHANGES IN NAME, ADDRESS, OR PHONE NUMBER.** Offerors are solely responsible for notifying the District's Purchasing Department of any changes, in writing, to the company's name, address, and telephone number. If an Offeror fails to notify the District of any changes in their contact information, the Offeror may be suspended from transacting business with the District until the changes have been made.

p. **SUBSTITUTIONS.** The use of brand names and catalog numbers does not prohibit the substitution of other brands of equal quality unless "NO SUBSTITUTE" is specified; however, the determination of an acceptable "substitute" is at the sole discretion of the District. No substitutions or cancellations are permitted after award without written approval by the District's Purchasing Executive Director or equivalent position.

q. **BRAND NAME OR EQUAL.** The use of brand/models in the solicitation document (IFB, RFP, RFO, etc.) is to establish a standard of quality, workmanship, performance, etc. Offerers may bid/propose brands/models they deem equivalent or equal to those shown on the bid/proposal. The burden of proof of equivalency or "Equal or" is upon the Offerer; however, the final determination of "Equal" is at the sole

discretion of the District. For line items, the Offerer must specify the make or model of each line item, even if offering the brand specified. DO NOT state "As Specified" or "Equal" rather clearly and completely list the brand/make/model. Offerer (s) submitting brands or models other than those specified may be requested to furnish samples, at Offerer's expense, of their offerings for evaluation by the District. These samples will generally NOT be returned and may be destroyed or consumed in testing/evaluation.

r. DEMONSTRATIONS/SAMPLES. In order for the District to determine an acceptable "substitute" or to determine "as equal" for "brand name or equal", a demonstration or sample of the products/goods may be requested.

- **i.** Offerer shall provide the demonstration version or sample at no cost to the District. The offerer shall bear all expenses for transportation, installation, removal, operational supplies, and repair parts of the demonstration/sample.
- **ii.** Offerer understands that this evaluation is without monetary consideration for the use of the equipment. It is for evaluation only and does not obligate the District to purchase the products or goods at the present or any future time.
- **iii.** The District agrees to use the demonstration version/sample for evaluation only and to use the product/good in an environment and under circumstances substantially consistent with the product's/good's design and intended use. The District agrees to provide reasonable care and safeguard of the demonstration version/sample while it is in the District's possession; however, Offerer acknowledges that the demonstration version/sample may be damaged/consumed, destroyed during the evaluation. The offerer understands that the results of the evaluation may not be used as an endorsement by the District or for promotional purposes using the District's name, logo, or other identifying information.
- **iv.** Offerer will indemnify, save harmless and defend the District from and against any claims, actions, debts, liabilities, and to the extent permitted by law attorney fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to the demonstration version/sample, or injuries to, or death of any persons whatsoever, in any manner caused by or attributed to Offerer or Offerer's agents, servants, representatives, consultants, or employees while in the District's possession or attributed to the failure or malfunction of the demonstration version/sample provided by the Offerer during the District's use, test, or evaluation of the demonstration version/sample.

s. FACILITY MODIFICATIONS. If any part of the Offer will necessitate any existing facility modifications including, but not limited to, the removal or relocation of any physical elements, the Offerer shall provide a detailed list of every modification necessary and associated cost to address each item. Further, if there is an increase of existing electrical, plumbing, or mechanical load(s) to the existing facility that will necessitate additional electrical outlets, water sewer, air conditioning, etc., the Offerer shall provide a comprehensive list of such, the necessary details and associate cost to address such item. The Offerer shall comply with all applicable codes, regulations, statutes.

t. INFORMALITIES AND IRREGULARITIES. The District reserves the right to waive minor irregularities and/or informalities and to accept or reject any bids/proposals in whole or in part or to negotiate separately in any manner necessary and/or to terminate the procurement solicitation process in its entirety provided that the action is in the best interest of the District. The Executive Director of Purchasing shall reject the Offer of the Offerer who is deemed non-responsive. The unreasonable failure of an Offerer to promptly provide information with respect to responsibility may be grounds for a determination of non-responsibility.

u. OFFER WITHDRAWAL. An Offerer may withdraw its Offer upon written request at any time prior to the receipt/opening date and time. "Bids" cannot be amended or altered, except to correct price extension errors, after the opening date and time; however, "Proposals" or "Offers" may be amended or altered IF the District initiates discussions.

v. PROHIBITION AS SUBCONTRACTORS. No Offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

w. PUBLIC INFORMATION ACT. Texas Public Information Act (TPIA). The vendor acknowledges that the Garland ISD is subject to the Texas Public Information Act (TPIA), Chapter 552, Texas Government Code. Vendor understands that information provided to District may be subject to disclosure under the Act and that District will comply with its obligations under applicable law For purposes of the TPIA, "public information" is defined as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- **i.** by Garland ISD; [or]
- **ii.** for Garland ISD and Garland ISD
  - **A.** owns the information; [or]
  - **B.** has a right of access to the information; or
  - **C.** spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- **iii.** by an individual officer or employee of Garland ISD in the officer's or employee's official capacity and the information pertains to the official business of the Garland ISD.

The vendor is expected to fully cooperate with the Garland ISD in responding to public information requests. This includes, but is not limited to, providing the Garland ISD with requested documentation. In the event that the request involves documentation that Vendor has clearly marked as confidential and/or proprietary, Garland ISD will provide the Vendor with the required notices under the TPIA. The vendor acknowledges that it has the responsibility to brief the Attorney General's Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure. District shall make all disclosure determinations in accordance with the TPIA and applicable law.

x. **PROPRIETARY INFORMATION.** With the exception of prior copyrighted or trademarked materials of the Vendor, the Vendor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities hereunder, whether or not any of the same is accepted or rejected by District, shall remain the property of District and shall not be used or published by Vendor or any other party without the express prior consent of District. In the implementation of the foregoing, Vendor hereby grants and assigns to District all rights and claims of whatever nature and whether now or hereafter arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with District in any steps District may take to obtain copyrights, trademark or like protections with respect thereto. All information owned, possessed, or used by District which is communicated to, learned, developed, or otherwise acquired by Vendor in the performance of consulting services for District, which is not generally known to the public, shall be confidential, and Vendor shall not, beginning on the date of first association or communication between District and Vendor and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Vendor's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Vendor shall not make any press releases, public statements, or advertisements referring to the Work or the engagement of Vendor as an independent vendor of District in connection with the Work or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of District. The vendor shall obtain assurances similar to those contained in this subparagraph from persons, vendors, and subcontractors retained by Vendor. The vendor acknowledges and agrees that a breach by the Vendor of the provisions hereof will cause District irreparable injury and damage. The vendor, therefore, expressly agrees that District shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

y. **ECONOMIC PRICE ADJUSTMENT (EPA).** The offeror may include an EPA (price increase or decrease) in its Offer; however, the offered price increases are to be capped by the appropriate Consumer Price Index (CPI) or Producer Price Index (PPI) that should be identified by the Offeror. EPA price increases are not automatic, are not cumulative, and must be justified by the Offeror, in writing, and are contingent upon District approval. The District reserves the right to terminate a Contract, without prejudice to the District, if a proposed price increase is not reasonable as determined by the sole discretion of the District.

z. **COMPETITION INTENDED.** It is the District's intent to maximize competition for all solicitations. It shall be the Offeror's responsibility to advise the District's Executive Director of Purchasing, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this solicitation to a single source. Such notification must be received no later than five (5) days prior to the date set for receipt/opening.

aa. **OFFEROR'S EXPERTISE.** By submitting an Offer and/or accepting a purchase/delivery order, Offeror represents that he/she is knowledgeable in the goods or services being offered including historical, current, and future market conditions, and that the District can rely on this representation. Offerors will deliver products, goods, and services per specifications.

bb. **SOLICITATION DOCUMENT PART OF CONTRACT.** The contents of the Offer submitted by the successful Offeror, solicitation document, and General Terms and Conditions will become part of any Contract awarded. The successful Offeror will be expected to perform and honor a Contract awarded by the District as a result of the Offeror's Offer.

cc. **F.O.B. DESTINATION (FREE ONBOARD).** F.O.B. destination for all competitive Offers is the District's standard for Offers and inside delivery.

dd. **RECEIPT AND OPENING OF OFFERS.** (1) Bids (i.e., Offers from IFBs/RFBs) will be publicly opened, Offerors identified, and prices read aloud immediately following the Receipt/Opening Date/Time. Bidders are invited to be present at the opening of the bids on the date and hour specified. (2) Proposals (i.e., Offers from RFPs, RFOs, and RFQs) will be opened by the District in a non-public forum. Names of Offerors and prices will NOT be disclosed until after evaluation and award. (3) All Offers received in response to solicitation documents (IFBs, RFPs, RFOs, RFQs, etc.) will be forwarded to an applicable Evaluation Committee for evaluation and recommendation.

ee. **NON-CONFORMING TERMS AND CONDITIONS.** Offerors submitting a non-conforming response or an Offer that includes corporate forms, brochures, or sample contract forms that do not conform to the solicitation document may be requested to withdraw non-conforming terms and conditions that do not affect the price, quality, or delivery of goods/services. If the response is to an RFB/IFB AND price, quality or delivery is affected, the Offer will be deemed "non-responsive" and will not be considered for further evaluation and/or award.

ff. **OFFEROR DOCUMENTATION.** The Offeror's "binder", cover letter, and/or standard statement of work template, etc. may become a part of the Contract Documents, but the Terms and Conditions (General and Special) and Statement of Work (SOW) of the District's solicitation document (RFP, IFB, RFO, RFQ, etc.) take precedence unless Offeror's deviations/exceptions are specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW') that is executed by Offeror and the District's Executive Director of Purchasing and incorporated into the Award Letter.

gg. **EXCEPTIONS FROM TERMS, CONDITIONS, and/or SCOPE OF WORK.** If there is any proposed exception from that prescribed in the scope of work/services, the appropriate line in the scope of work/services shall be ruled out and the exception clearly stated or the exception clearly and completely noted on the Exceptions to Terms, Conditions, and/or Statement of Work Form. The District reserves the right to determine the responsiveness of any such deviation. If the District determines any such deviation is unacceptable, the Offer may be deemed "non-responsive" and not be considered for further evaluation and/or award. The District's determination of non-responsive is at the District's sole discretion and is not subject to dispute.

ii. **DEBARMENT.** By submitting a proposal, the Offeror certifies that it is not currently listed as debarred on the Texas Comptroller's website, by the District, or similar State/Federal Agency.
Debarment. In accordance with the provisions of Appendix A to 49 CFR (Code of Federal Regulations), Part 29, Vendor by signing this Agreement shall certify that to the best of the Vendor's knowledge and belief, that it and its principals:

- **i.** are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State, or Local Government department or agency, including the Universal Service Administration Company (USAC) for the administration of the E-rate Rules.
- **ii.** have not within a three (3) year period preceding this offer been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- **iii.** are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with the commission of any of the offenses enumerated in (a)(2) above; and
- **iv.** have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

jj. SUBCONTRACTORS. The offeror shall include a list of all subcontractors anticipated to be used in fulfilling the Offer. The offeror shall also include a statement of the Subcontractor's qualifications. The District reserves the right to reject the Offeror's selection of any or all Subcontractors. The Vendor shall contract with each of its subcontractors, at a minimum, with the same contractual provisions and responsibilities as indicated in this Agreement.

kk. EXPENSES INCURRED IN OFFER PREPARATION. The District will not be liable in any way for any costs incurred by any Offeror in the preparation of its Offer, nor for the presentation of its Offer and/or participation in any discussions and/or negotiations.

mm. REQUIREMENT FOR INTERPRETATION. Requests by the District's Purchasing staff for clarification of Offers shall be in writing unless the clarification does not impact on price, delivery, quality, or a specific portion of the Statement of Work. Applicable requests shall not alter the Offeror's pricing information contained in its price proposal.

nn. TAXES. Because fiscal responsibility is an evaluation criterion, in the event that an Offeror is, or subsequently becomes, delinquent in the payment of school ad Valorem taxes, such fact may be grounds for rejection of the Offer, or if already awarded the Contract/Agreement, for termination of the contract without prejudice to the District. However, the District reserves the right to deduct any amounts owed for delinquent taxes from pending payments that the District may owe to the Offeror as a result of such Contract.

oo. PAYMENT OF TAXES. All Offerors located or owning property in Dallas County shall assure that all real and personal property taxes are paid. The District will verify payment of all real and personal property taxes due by the Offeror prior to award of any contract award or renewal.

pp. INDEPENDENT CONTRACTOR RELATIONSHIP. In any resulting contract/agreement, the Offeror is being engaged as an independent contractor and the District will have no responsibility or obligation to provide transportation, insurance, workers' compensation, or employee benefits normally associated with employee status. Offeror covenants and agrees to conduct itself consistent with independent contractor status and that it will neither hold itself out as nor claim to be an officer, partner, employee, or agent of the District. The offeror will disclose any relationship that could be construed as a conflict of interest or potential conflict of interest or prejudice the independent relationship of the District and the Offeror.

qq. RELIANCE ON OFFEROR ASSURANCES. In the performance of the services hereunder, Offeror represents that it, its owner, and employees have all licenses and permits to (if required) work in the state of Texas and that Offeror is a business either fully incorporated in the state of Texas or recognized and allowed to operate in the state of Texas. The offeror represents that it, its owner, and employees have the knowledge, abilities, skills, and resources to provide the technical assistance and support services specified in this agreement as required by the District. Further, Offeror represents that it has the competence and qualifications to render such services with little or no guidance from the District and has experience in providing said goods, products, commodities, and/or services, and in reliance on such assurances, the District may enter into an agreement with the Offeror. The offeror shall comply with all applicable federal, state, and local laws, executive regulations, and orders.

rr. EVALUATION CRITERIA. In awarding a Contract, Offers may be evaluated on: the purchase price, the reputation of the vendor and of the vendor's goods and services, the quality of the vendor's goods or services, the extent to which the goods or services meet the District's needs, the vendor's past relationship with the District, the impact on the ability of the District to comply with laws relating to historically underutilized businesses, the total long-term cost to the District to acquire the goods or services, and vendor's references, the record for fiscal and contracting responsibility, knowledge of the product/good/service and any other relevant factor specifically listed in the solicitation "Other relevant factors" are identified elsewhere in the solicitation. Quality and suitability of the product and not price alone shall be considered in the acceptance of Offers.

ss. ACTIONS REGARDING OFFERS TO SOLICITATIONS/CONTRACTS. The District expressly reserves the right, without prejudice, to:

- **i.** Reject or cancel any or all proposals.
- **ii.** Waive any defect, irregularity, or informality in any response to a solicitation procedure allowed by statute or policy.
- **iii.** Waive as an informality, minor deviations from specifications at a lower price than other proposals meeting all aspects of the specifications if it is determined that total cost is lower, and the overall function is not impaired.

iv. Reissue solicitation (i.e., RFP/IFB/RFO/RFQ).
v. Consider and accept an alternate proposal as provided herein when most advantageous to the District;
vi. The District has the right to cancel the contract with a thirty-day written notice, without prejudice, for factors including, but not limited to, non-availability or non-appropriation of funds; and/or
vii. Procure any item or services by other means to meet time-sensitive requirements.

tt. **OUT-OF-STATE OFFERORS**. The "Reciprocity Rule" applies. Offerors whose principal place of business is located in a state which gives preference to residents are subject to the same restrictions when submitting an Offer with an entity of the State of Texas.

uu. **WARRANTY.** The products, goods, or services furnished under this Contract shall be covered by the most favorable commercial warranties available to any customer for the same or similar products, goods, or services.

vv. **ENVIRONMENT OF DISTRICT.** The District is a tobacco-free, drug-free, weapon-free, and alcohol-free environment. It is the responsibility of the Offeror to ensure that Offeror's employees, agents, subcontractors, etc. are not under the influence and/or possession of drugs, tobacco, alcohol, or weapons. If an employee, agent, subcontractor, etc. of Offeror is found to be under the influence and/or in possession of drugs/tobacco and/or alcohol and/or weapons at the time of service, the Offeror will be notified at once by the District that the individual(s) must be immediately restricted from all District campuses/departments. Repeated offenses by Offeror could result in Contract termination for default.

ww. **FIRM PRICE OFFER PERIOD.** Offer pricing shall be firm for a minimum period of one hundred and twenty (120) calendar days following the date established for the receipt/opening date to allow time for the District to evaluate, accept, and/or reject Offers.

xx. **AWARD TO MULTIPLE VENDORS.** The District reserve the right to award to a single vendor or multiple vendors i.e., primary, secondary, and tertiary suppliers, etc. The Contract is not exclusive to one Offeror unless so stated in the Statement of Work, or Offeror states "all or none" in its response/Offer and Offer is accepted by District. This Agreement shall be binding upon and insure to the benefit of the parties hereto another respective permitted assigns and successors.

yy. **VENDOR FILE UPDATE BY OFFEROR.** Within seven (7) working days of notification of award of Contract/Agreement, the Offeror must update the vendor information in District's Vendor Management Database. Failure to update the database may result in termination of Contract/Agreement for default.

zz. **CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE.** Contract Documents are the documents that comprise the basis of the contractual agreement between the District and the successful Offeror. In the simplest contracts, Contract Documents include the District's solicitation document (RFP, IFB, RFO, RFQ, etc.); the Offeror's response to the solicitation document; and the notice of award or acceptance by the District. In more complex contracts, Contract Documents may be identified in the District's notice of award or acceptance and may include the District's solicitation document (RFP, IFB, RFO, RFQ, etc.); the Offeror's response to the solicitation document; the District's request for Best and Final Offer (BAFO); the Offeror's response to the BAFO; any other documents impacting on the Agreement as deemed necessary by the District; and the notice of award or acceptance by the District.

i. Offeror will ensure the District's terms and conditions, statement of work, and Contract Documents order of precedence flow down to Offeror's subcontractors, agents, and/or third-party business "partners".
ii. Regardless of the documents comprising the Contract Documents, the District's solicitation document (to include the Statement of Work (SOW) and Terms and Conditions) take precedence over other Contract Documents (regardless of date) unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") executed by Offeror and the District's authorized signator and incorporated into the Award Letter. Phrases embedded in supporting documents submitted in response to a solicitation document that attempts to limit, change, restrict, or replace the precedence over the District's solicitation document may be declared null and void by the District unless such "changes" are specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") executed by Offeror and the District's authorized signator and included as an attachment/addendum to the Contract.
iii. After contract award, the successful Offeror, its sub-contractors, and/or other third parties to the Contract may provide additional information and/or documentation to facilitate the accomplishment of the Contract's SOW in the form of administrative procedures, processes, flow charts, templates, etc.; however, these additional documents (especially embedded comments or general references terms, conditions, SOW) do not change nor replace existing Contract language nor do they supersede or change the precedence of the Contract Documents unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW') executed by Offeror and the District's authorized signator and included as an attachment/addendum to the Contract. Any attempt by the Offeror and/or its subcontractors, agents, third parties, etc. to submit or introduce documents that supersede or take precedence over the Contract Documents may be declared null and void by the District.
iv. Supporting and/or backup information and/or documentation to include, but not limited to, administrative procedures, workflow charts, templates, third-party documents, end-user license agreements, "shrink-wrap" and/or "click-wrap" licenses, etc. may be used to define processes, procedures, or performance expectations; however, this supporting/backup information/documentation does not take precedence over the solicitation document and/or documents identified as Contract Documents unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Condition, and/or SOW") that is executed by Offeror and the District's authorized signator and included as an attachment/addendum to the Contract.

2. **PROTEST and/or APPEAL PROCESS.** A protest shall be in writing and shall be filed with the District's Deputy Superintendent for Finance. A protest of a solicitation shall be received by the Deputy Superintendent for Finance before the receipt/opening date. A protest of a proposed award or an award or notice of termination or default shall be filed within ten (10) working days after the protester knows or should have known the basis of the protest. A protest received after the ten (10) working day period will not be considered and will be returned. A protest must include:
   - **a.** The name, address, and telephone number of the protestor;
   - **b.** The signature of the protestor or its representative;
   - **c.** Identification of the solicitation or contract number;
   - **d.** A detailed statement of the legal and factual grounds of protest including copies of relevant documents;
   - **e.** The form of relief requested.

The Deputy Superintendent for Finance will respond to all protests no later than ten (10) working days of receipt. Offerors are reminded that the restricted contact period requirements remain applicable. The protesting party may appeal the determination within fifteen (15) district business days of the receipt of the notice of determination.

3. **OFFICIAL CORRESPONDENCE.** All official Contract related correspondence must be mailed to the District's Executive Director of Purchasing.
   Garland ISD
   Attn: Executive Director of Purchasing
   501 S. Jupiter Road
   Garland, TX 75042

4. **PURCHASE ORDERS/DELIVERY ORDERS.** A Purchase Order serving as a Delivery Order will be issued after awarding of a Contract and will cite the IFB/RFP/RFO/RFQ number, a brief explanation of the goods and/or services being purchased under the Contract and required delivery dates of deliverables under the Contract.
   - **a.** The terms and conditions of the applicable IFB/RFP/RFO/RFQ take precedence over the General Terms and Conditions associated with a "normal" Purchase Order. The purchase order/delivery order also serves as the tracking document to facilitate payments; therefore, the successful vendor shall not begin work/services or deliver merchandise without a signed purchased order/delivery order.
   - **b.** Any Purchase/Delivery Order issued during the effective period of this Contract, and not completed within the effective period of the Contract, will be completed by the Offeror under the terms and conditions of this Contract. Texas School finance law outlines that purchase orders are valid only for the term outlined and agreed upon by both parties. The purchase order does not typically “carry over” through school fiscal years and should be closed at this time unless otherwise notified by the district.

5. **DISPUTES.**
   - **a.** Pre-Litigation Mediation. Any claim, dispute, or other matter in question arising out of or related to this Agreement (collectively, "Claim" or "Claims") shall be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall share the mediators fee and any filing fees equally, and the mediation shall be held in Dallas, Texas. Agreements reached in mediation must be approved by the Board of Trustees and shall thereafter be enforceable as settlement agreements in any court having jurisdiction thereof. Mediation shall be conducted by a mediator selected jointly by the District and Vendor. Except for injunctive relief, neither party may commence litigation relating to any Claim arising under this Agreement without first submitting the Claim to mediation.
   - **b.** Claims for Consequential Damages. The Vendor and District waive Claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this Agreement. Nothing contained in this paragraph 5 shall be deemed to preclude an assessment of liquidated damages, in accordance with the requirements of the Agreement Documents.
   - **c.** Texas Tort Claims Act. The District does not waive any of its immunities from lawsuit or damages, or both, as provided by the Texas law, as a public institution, whether granted by the constitution, common law, or statute and nothing contained in the Agreement Documents, or any action required of the District by the Agreement Documents shall be interpreted to be such a waiver.

NEITHER THIS AGREEMENT, NOR ANY PART THEREOF, NOR ANY DISPUTE ARISING HEREUNDER, IS SUBJECT TO ARBITRATION.

6. UNAUTHORIZED PURCHASES. Offeror understands and acknowledges that during the term of the Contract any shipment or delivery of goods and services made to District's campuses and departments without a properly approved purchase order/delivery order constitutes an unauthorized purchase and financial obligation. The District does not assume any responsibility for these products, goods, and services. The offeror understands and accepts full responsibility and will not seek payment for unauthorized purchases. The offeror further understands and acknowledges that the District will not issue payment for products, goods, and services delivered without a properly approved purchase order/delivery order.

7. ASSIGNMENT/DELEGATION. This Agreement is a personal service contract for the services of Vendor, and Vendors interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party unless consented to in writing by District (which consent may be withheld in District's sole and absolute discretion). The benefits and burdens of this Agreement are, however, assignable by District. The Vendor shall not subcontract any portion of the work required by this Agreement without the prior written approval of the

District except for any sub-contract work identified herein.

8. PLACE OF DELIVERY. The place of delivery shall be that set forth in the purchase order. All deliveries must be inside deliveries unless other arrangements are made. **All PRICES- F.O.B. DESTINATION -SHIPPING and HANDLING CHARGES PREPAID**.

9. DELIVERY TERMS. If a delivery is to be made to a location other than the District's central warehouse/distribution center, the delivery shall be made and articles shall be placed inside the school building or district facility in the room(s) designated, at no additional charge. The offerer is required to contact the School/Department specified on the purchase order, twenty-four (24) hours prior to delivery.

10. TITLE AND RISK OF LOSS. The title and risk of loss of the goods shall not pass to the District until the District actually receives and accepts possession of the goods at the point or points of delivery regardless of FOB terms.

11. RIGHT OF INSPECTION. The District has the right to inspect the goods at delivery before acceptance. If the District is not able to inspect the goods at the time of the delivery, the District reserves the right to inspect and approve the material within a reasonable time after delivery. If specifications are not met, material may be returned at Offerors expense and the Offeror assumes all risk for damages incidental to the rejection of such goods. Payment shall not constitute an acceptance of the material nor impair the District's right to inspect or invoke any of its remedies.

12. DISTRICT REPRESENTATIVE. The District may designate a District Representative for this Project who shall assume certain activities and responsibilities attributed to the District in this Agreement. The Vendor agrees to cooperate and provide services in conjunction with the District Representative, as directed by the District.

13. SAFETY DATA SHEETS. The District will not receive any materials, products, or chemicals which may be hazardous to an employee's health unless accompanied by a Safety Data Sheet.

14. TIME. Time is of the essence. The offerer agrees to perform all obligations, deliver products, and/or render services set forth herein.

15. INDEMNIFICATION and HOLD HARMLESS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE VENDOR SHALL AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE DISTRICT, ITS TRUSTEES, OFFICERS, DIRECTORS, OFFICIALS, VENDORS, VOLUNTEERS, EMPLOYEES, SUCCESSORS AND ASSIGNEES, THE ARCHITECTS, ENGINEERS, AND THE PROGRAM MANAGERS {COLLECTIVELY, "THE INDEMNIFIED PARTIES") OF, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, PENALTIES, AND EXPENSES, INCLUDING, ATTORNEY FEES AND COURT COSTS, OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT, WRONGFUL OR TORTIOUS ACT OR OMISSION OF THE VENDOR, ANY SUBCONTRACTOR, SUB-VENDOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER.

{COLLECTIVELY, "THE LIABILITIES"). IN THE EVENT OR FAILURE BY THE VENDOR TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION PARAGRAPH, EACH OF THE INDEMNIFIED PARTIES MAY, AT ITS OPTION, AND WITHOUT RELIEVING VENDOR OF ITS OBLIGATIONS HEREUNDER, MAY SO PERFORM, BUT ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY VENDOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES, OR ANY OF THEM SHALL BEAR INTEREST UNTIL REIMBURSED BY VENDOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS. THIS INDEMNIFICATION PARAGRAPH SHALL NOT BE LIMITED TO DAMAGES COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

THE VENDOR SHALL PROTECT AND INDEMNIFY THE DISTRICT FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS, AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY VENDOR, OR BY DISTRICT AT THE DIRECTION OF VENDOR, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, DISTRICT SHALL PROMPTLY NOTIFY VENDOR AND VENDOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. THE VENDOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF DISTRICT'S OR ARCHITECT'S OR ENGINEER'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, DISTRICT AGREES TO COOPERATE REASONABLY WITH THE VENDOR AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR **OWN EXPENSE.**

IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THESE INDEMNIFICATION OBLIGATIONS, SUCH LEGAL LIMITATIONS ARE MADE PART OF THE INDEMNIFICATION OBLIGATION AND SHALL OPERATE TO AMEND THE INDEMNIFICATION OBLIGATION TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND SO MODIFIED, THE INDEMNIFICATION

OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.

IT IS UNDERSTOOD AND AGREED THAT THIS ARTICLE, AS APPLIED TO CERTAIN CONSTRUCTION CONTRACTS, IS SUBJECT TO, AND EXPRESSLY LIMITED BY, THE TERMS AND CONDITIONS OF THE TEXAS CIV. PRAC. & REM. CODE ANN. SEC 130.001 TO 130.005, AS AMENDED.

THE INDEMNITIES CONTAINED HEREIN SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER.

16. RECOVERY OF FUNDS. If the Offerer fails to deliver both the quality and quantity of items on which the award was made in the manner specified in the Contract, the District reserves the right to purchase the specified products, goods, and/or services on the open market and Offerer agrees to allow the District to deduct the difference in price and cost of handling, if any, from pending invoices. If there are no outstanding invoices the Offerer will be billed accordingly and will pay the amount within fifteen (15) days of the notification by the District.

17. REMEDIES FOR NON-PERFORMANCE. If at any time, the Offerer fails to fulfill or abide by the terms, conditions, or specifications of the Contract (i.e., delays, defaults, non-performance, etc.), the District reserves the right to employ any remedy allowed by Contract, in law, in equity, or by Uniform Commercial Code (UCC) to include, but not limited to, the purchase on the open market and charge the Offeror the difference between contract and actual purchase price and/or terminate the Contract within ten (10) days written notification of intent.

18. LIQUIDATED DAMAGES. If the successful Offeror fails to deliver or defaults on this Contract within the time specified in the contract, the Offeror shall pay (or have withheld from payments due), at the option of the District as liquidated damages $200, or the amount identified elsewhere in the solicitation/Contract, per line item of Delivery Order/Purchase Order that is delinquent. The offeror agrees that this is a reasonable cost to compensate the District for time and effort involved in procuring replacement products and/or services, which costs would be difficult, if not impossible, to compute with certainty, and does not constitute a penalty. Assessment of liquidated damages does not preclude the District from seeking and obtaining other remedies as set forth in this solicitation or any other remedy at law or in equity available to the District.

19. FORCE MAJEURE. The District shall not be liable for defaults or delays due to acts of God or the public enemy, acts or demands of any governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence.

20. GOVERNING LAW AND VENUE. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas, and the parties hereto agree that venue shall be in Dallas County, Texas.

21. ENTIRE AGREEMENT; MODIFICATIONS. This Agreement supersedes all prior agreements, written or oral, between Vendor and District and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended, or altered except by a written amendment signed by District and Vendor.

22. EFFECTIVE DATE. The Effective Date of the Contract/Agreement, if any, is the date that the award is approved by Garland ISD's Board of Trustees or the date of final execution by the designated district representative. In some cases, the Effective Date, and the date for the start of services may be separated by several weeks and/or months.

23. CONTRACT PERIOD/EXTENSIONS. The contract period is as outlined elsewhere in the Contract and the District reserves the right to exercise the renewal option with or without prejudice. Contract renewals/extensions will be exercised and executed within forty-five (45) days of the expiration of the then-current term unless a different time is noted elsewhere in the Contract. If at the end of the final day of the final Contract/Agreement term and no termination notice has been received from either party, the Contract/Agreement may be extended in writing via an addendum for up to one hundred twenty (120) days beyond the date of the then-current expiration date at the sole option of the District with mutual agreement between the parties; however, the extension addendum must be signed by both parties prior to the 30th day from the ending date of the final term.

24. SEVERABILITY. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

25. PURCHASE OF SUBSTANTIALLY SIMILAR PRODUCTS/GOODS/SERVICES. The District at its discretion may purchase from existing Contracts/Agreements for products, goods, supplies, and services which may be the same or similar to those identified in the existing Contract/Agreement, as is deemed in the best interest of the District.

26. ACCELERATED DELIVERY. If the District urgently requires delivery of any quantity of an item before the delivery date under this Contract, and if the Offeror will not accept an order providing for the accelerated delivery, the District may acquire the urgently required product(s) from another source.

27. BUSINESS ETHICS.

a. During the course of pursuing contracts, and the course of Agreement performance, the Vendor and its subcontractors and vendors will

maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans, or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the District, its trustees, officers, agents, or Vendors of the District, or any of their family members. At any time, the Vendor believes there may have been a violation of this obligation, the Vendor shall notify the District of the possible violation. The District is entitled to request a representation letter from Vendor, its subcontractors, or vendors at any time to disclose all things of value passing from Vendor, its subcontractors, or vendors to District's personnel, its trustees, officers, agents, or Vendors.

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

28. SPECIAL TOOLS, TEST EQUIPMENT, MASTER TEMPLATES. If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Offeror for the purpose of filling this order or if a master template/die has to be constructed, such special tooling equipment and templates/dies and any process sheets related thereto shall become the property of the District and to the extent feasible and desired by the District.

29. RIGHT TO AUDIT. The Offeror's activities conducted, and records maintained pursuant to the Contract shall be subject to monitoring and evaluation by the District or its duly appointed representative(s). All records must be maintained for 24 months from the completion of the Contract (including any or all extensions) unless longer retention is required and identified elsewhere in the solicitation/Contract.

30. RESPONSIBILITY FOR ACTIONS. The offeror is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither the Offeror nor any of the foregoing has any authority to act or speak on behalf of the District.

31. CRIMINAL BACKGROUND CHECK AND IDENTIFICATION BADGE: Vendor shall comply with all applicable requirements of Texas Education Code Chapter 22, Subchapter C, including Section 22.0834, and any applicable Texas Department of Public Safety requirements, with respect to criminal history record information reviews for Vendor's employees, agents, and subcontractors**.** Further, Vendor will obtain criminal history record information that relates to an employee, applicant for employment, subcontractor, or agent of the Vendor if the employee, applicant, or agent has or will have continuing duties related to the contracted services; and the duties are or will be performed on school property or at another location where students are regularly present. The Vendor shall certify to the District before beginning work and at no less than an annual basis thereafter that criminal history record information has been obtained. The vendor shall assume all expenses associated with the background checks and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District property or other locations where students are regularly present. The district shall be the final decider of what constitutes a "location where students are regularly present." The Vendor's employees, agents, and subcontractors subject to Article 14 shall be identified by a photographic identification badge, issued by a District-approved third-party company at the Vendor's expense. The third-party company shall verify the criminal record history information and may be used to verify compliance with the federal Drug-Free Workplace Act of 1988 or its successor, and the federal Education Department General Administrative Regulations, current edition, in its testing and review process. The vendor's violation of this section shall constitute a substantial failure under Article 7.

32. EMPLOYEE DISCRIMINATION. During the performance of this Contract, the Offeror agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, disability, political belief, religion, marital and/or veteran status.

33. SEXUAL HARASSMENT. Sexual harassment or sexual misconduct with District employees or students is strictly forbidden and is subject to disciplinary action. In the performance of this Contract, Offeror agrees to not engage in sexual harassment or sexual misconduct with employees or students.

34. INVOICES AND PAYMENTS. Payment terms will be net thirty (30) days after acceptance of delivery or receipt of correct invoice, whichever comes later, unless a prompt payment discount is offered or unless different payment terms are noted elsewhere in the Contract. All invoices must be mailed to the District's address as noted elsewhere in this solicitation/Contract but addressed to Attention: Accounts Payable.

35. PAYMENT TERMS.

a. Absent any provision to the contrary, District shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to Vendor hereunder if any one or more of the following conditions precedents exist:

- **i.** Vendor is in breach or default under this Agreement.
- **ii.** Any part of such payment is attributable to Work which is not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with this Agreement;
- **iii.** Vendor has failed to make payments promptly to its sub-vendors or sub-contractors or other third parties used in connection with the Work for which District has made payment to Vendor; or
- **iv.** If District, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient

to complete the Work in accordance with this Agreement, no additional payments will be due to Vendor hereunder unless and until Vendor, at its sole cost, performs a sufficient portion of the Work so that such portion of the compensation then remaining unpaid is determined by District to be sufficient to so complete the Work.

b. No partial payment made hereunder shall be construed to be final acceptance or approval of that part of the Work to which such partial payment relates nor shall it relieve Vendor of any of its obligations hereunder with respect thereto.

c. Vendor shall promptly pay all bills for labor and/or material performed and furnished by others in connection with the performance of the Work.

d. Vendor shall maintain on a current basis complete books and records relating to this Agreement. Such records shall include, but not be limited to, documents supporting all bids, income, and expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Agreement. In addition, the Vendor shall maintain a detailed payroll record including all subsistence, travel, and field expenses, canceled checks and receipts, and invoices for all items. These documents and records shall be retained for at least ten (10) years from the completion of this Agreement. The vendor will permit District to audit all books, accounts, or records relating to this Agreement or all books, accounts, or records of any business entities controlled by the Vendor that participated in this Agreement in any way. Any audit may be conducted on Vendor's premises or, at District's option; another location. The vendor shall provide all books and records within fifteen (15) days upon receipt of written notice from the District. The vendor shall refund any monies erroneously paid to the Vendor or charged to the District. If District ascertains that it has been billed erroneously by Vendor for an amount equaling 5% or more of the Agreement amount, the Vendor shall be liable for the costs of the audit in addition to any other penalty to be imposed. Records of Vendor's costs, reimbursable expenses pertaining to the Project and payments shall be made available to District or its authorized representative during business hours and shall be retained for ten (10) years after final Payment or abandonment of the Project unless District otherwise instructs Vendor in writing.

e. The acceptance of Final Payment shall constitute a waiver of all claims by the Vendor except those previously made in writing and identified by the Vendor as unsettled at the time of the Final Request for payment.

f. District shall have the right to verify the details set forth in Vendor's billings, certificates, and statements, either before or after payment, therefore, by (1) inspecting the books and records of Vendor at mutually convenient times; (2) examining any reports with respect to this Project; (3) interviewing Vendor's business employees; (4) visiting any place where the performance of all or a portion of the work occurs; and (5) other reasonable action.

g. In the event, a federal grant or other federal financing participates in the funding of this agreement, the Vendor shall permit access to and grant any federal representatives the right to examine his books covering his work under this Agreement. The Vendor shall comply with federal requirements as they relate to this work.

h. For purposes of Texas Government Code§§ 2251.021(a)(1) and 2251.021(a)(2), the date the performance of service is completed, and the date goods are received, is the date when the District's representative approves the invoice.

i. District shall not prepay for any Work until it is completed.

j. District will only pay for services rendered.
NOTE: All goods and services require the issuance of a valid purchase order PRIOR to the commencement of the delivery of the goods and/or start of services.

36. TERMINATION. The award or Agreement/Contract (or Agreement/Contract resulting from this solicitation) may be terminated or canceled under the following circumstances.

a. District may cancel or terminate the award or agreement for convenience upon 30-day written notice.

b. During the term of the agreement, the District may terminate the agreement at the expiration of each District budget period if funds are not appropriated for payment under the agreement.

c. Work under the agreement may be terminated in whole or in part by the District upon delivery to Offeror of a notice of termination specifying the extent to which performance of work under the Agreement is terminated and the date upon which termination becomes effective. This right of termination is in addition to and not in lieu of District rights to cancel undelivered goods or services under the Agreement.

d. District may cancel all or any part of the undelivered goods or services under the Agreement if Offeror breaches any of the terms of the Agreement, including, but not limited to, warranties of Offeror, or if Offeror becomes insolvent or begins bankruptcy or reorganization proceedings.

e. District's rights of termination or cancellation are in addition to other remedies District may have in law or equity including, but not limited to, debarment or suspension from future Contracts for a period decided by the District and/or termination for default.

37. WAIVER. No delay or omission by either of the parties in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver there-of. A waiver by either of the parties of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or any other covenant, condition or agreement herein contained.

38. SOFTWARE REMOTE ACCESS. The offeror shall not install remote access or backdoor into Offeror's systems during its analysis of the District's system or at any other time. The offeror will remove remote access or backdoor from third-party software to be used by the District.

39. LEGAL FEES AND COURT COSTS. The resulting award from this solicitation constitutes the basis of a Contract between the District and the awarded Offeror. If the District has to take an action, in state or federal court, to enforce or interpret the Contract, the District is entitled to recover its reasonable attorneys' fees and court costs from the Offeror. Without waiving any rights available to the District for recovery, if the District is the prevailing party, Offeror hereby agrees and authorizes the District to deduct the reasonable attorneys' fees and court costs from amounts, if any, owed to Offeror under the Contract.

40. INSURANCE.

- **a.** Vendor, consistent with its status as an independent vendor, shall carry at least the following insurance in such form, in such companies, and such amounts, unless otherwise specified, as District may require.
- **b.** Vendor shall deliver to District:
  - **i.** Certificates evidencing the existence of all such insurance within ten calendar days after the execution of the award and prior to the performance or additional performance of any services to be performed by Vendor hereunder from or after the date of this Award. Should the Vendor fail to deliver to the District these certificates in the form and the manner specified within the required ten calendar days or as may be extended in writing by the District at its sole discretion; it is agreed that the award is void and of no effect.

    All insurance policies proposed or obtained in satisfaction of these requirements will comply with the following general specifications and will be maintained in compliance with these general specifications throughout the duration of the contract/agreement, or longer, if noted:

    Each policy will be issued by a company authorized to do business in the state of Texas with an A. M. Best Company rating of at A-, IV, or better.

    1. General liability and auto liability policies will be endorsed to provide the following:
    2. Name as additional insured the District, its officials, agents, and employees.
    3. Waiver of subrogation in favor of the District.

    That such insurance is primary and non-contributory to any other insurance available to the additional insured.

    Workers' compensation policy will be endorsed to provide a waiver of subrogation in favor of the District, and coverage must apply to the workers' compensation laws of the state of Texas.

    All policies will be endorsed to provide 30 days' prior written notice or cancellation, nonrenewal, or reduction in coverage except ten days for nonpayment of premium.

    Should any of the required insurance be provided under a claims-made form, the contractor will maintain such coverage continuously throughout the term of this contract/agreement and without lapse for a period of three years beyond the contract/agreement expiration, such that occurrences arising during the contract/agreement term that give rise to claims made after expiration of the contract/agreement will be covered.

    The certificate holder address on all certificates of insurance should read as follows or as otherwise directed by Risk Management Services:
    Garland Independent School District
    Risk Management Services
    P.O. Box 461407
    Garland, TX 75046

  - **ii.** General and Automobile liability should be primary and non-contributory.
- **c.** The insurance policies required shall be kept in force for the periods specified below:
  - **i.** Commercial General Liability Insurance shall be kept in force until receipt of final payment by the Vendor.
- **d.** Workers' Compensation Insurance shall be kept in force until the Vendor's Services have been fully performed and accepted by the District in writing. Contracts/agreements under $50,000 do not require proof insurance unless the services are within the categories listed: legal services, medical services, including, but not limited to, psychological services, counseling services, and occupational therapy and/or is providing a service that requires a professional license. If the contract amount is under $150,000, only professional liability insurance is required. All construction and maintenance contracts/agreements require proof of insurance. This applies to all aspects of building work including, but not limited to, ducts, electrical, HVAC, plumbing, roofing, asbestos abatement, elevator maintenance, architectural engineering, and the like of determined by Risk Management.
- **e.** Workers' Compensation: Offeror must maintain workers' compensation coverage for its employees as required by all applicable Federal, State, Maritime, and local laws including Employer's Liability with limits of $500,000 per accident/ $500,000 per employee / $500,000 policy limit with Statutory Limits. Offeror acknowledges that the District will NOT provide Workers Compensation coverage to the Offeror and

Offeror represents to the District that all employees, subcontractors, agents, representatives, etc. of the Offeror who will provide products, goods, or services to the District will be covered by worker's compensation coverage for the duration of the Contract, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance regulation. Workers' Compensation policy will be endorsed to provide a waiver of subrogation in favor of the District and coverage must apply to the workers' compensation laws of the State of Texas. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. Persons providing "products, goods, or services" to the District include all persons or entities performing all or part of the services that the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, and owner-operators. "Services" include without limitation, providing hauling or delivering equipment or materials, or providing labor, transportation, or other services related to the project. "Services" do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets. (Vernon's Ann. Civ. Stat., Art. 8308-3.23)

f. General Liability: Offeror must maintain General liability coverage with at least the following coverages:
Bodily injury and property damage of $1,000,000 per occurrence/ $2,000,000 aggregate

g. Automobile Liability: Offeror must maintain automobile liability coverage for owned, non-owned, and hired vehicles with minimum limits as follows:
Bodily injury of $250,000 per person/ $500,000 per accident;
Property damage of $250,000;

h. Professional Liability: For licensed professionals, professional liability/errors or omissions in the amount of $1,000,000 are required.

i. Pollution Insurance (Not covered by General Liability): For environmental/hazmat services, pollution insurance of $1,000,000 in the aggregate is required **if a hazardous substance is involved**.

j. Umbrella Liability Insurance: $1,000,000 per occurrence/ $1,000,000 aggregate.

41. SAFETY. All Offerors and Subcontractors performing services for the District are required and shall comply with all Occupational Safety and Health Administration (OSHA) State and County Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all Offerors and Subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any person or property within and around the worksite area under this contract. Additionally, Offerors and Subcontractors must ensure that their employees refrain from carrying firearms, illegal drugs, and or alcoholic beverages while performing duties in accordance with this contract.

42. BONDS. Bid bonds, performance bonds, , and payment bonds are required to ensure performance and safeguard taxpayer funds. (Applicable only to Construction Solicitations)

a. In General: The Bonds shall in all respects conform to the requirements of the law of the State of Texas including, without limitation, the requirements in TEX. PROP. CODE §§53.201-53.239, as amended, and shall (1) name obligees; the Owner (i.e., District) and the other Indemnities, a lender(s) of Owner, if any, and the title insurance company(ies) which has (have) issued title policies to Owner or its lender(s), if any, (2) be in a form satisfactory to Owner and be issued by a surety licensed and admitted to doing business in Texas, which maintains at least an "A-" rating or better as issued by AM Best & Co.

b. Reinsurance: In accordance with Tex. Ins. Code §7.19-1, for any risk exceeding 10% of the surety's capital on any bid bond, surety bond, or performance bond, the respective surety shall obtain reinsurance on such risk with one or more reinsurers that are duly authorized, accredited, or trusted to do business in Texas. Such reinsurance shall be witnessed by written certification as a condition precedent to the District's acceptance of the bond.

c. Venue: If any suit shall be instituted against a surety, guarantee, or Fidelity Company by the District, the proper Court of Dallas County shall have jurisdiction of this case, and the surety, guarantee or Fidelity Company shall be deemed a resident of the county wherever they may do business. Tex. Ins. Code §3503.151(b).

d. BID BOND REQUIREMENT:

i. A bid bond is required with a bid of $10,000.00 or more.

ii. Each solicitation shall be accompanied by a Surety Company bid bond in the amount of not less than five (5) percent of the total bid/proposal amount (base price plus all allowances). Bond shall be payable to the District as payee or oblige and shall be effective on the receipt/opening date of the solicitation. Proposer may not withdraw their proposal within 90 days of the date of the proposal submission. Should a proposer (1) withdraw its Proposal within the 90-day time period, or (2) if selected, fail to execute and return to Garland ISD, the Contract and Performance and Payment Bonds within fifteen (15) calendar days after the date of transmittal of the Contract Documents for execution, the Proposal Guaranty Bond becomes the property of Garland ISD. Bid Bond shall be executed by a surety duly authorized to do business in Texas and licensed by the State of Texas to issue surety bonds and must be accompanied by a properly dated and executed Power of Attorney with a Surety seal on each document. Use of a Surety company's bond form is not acceptable and will result in the Proposal being deemed non-responsive.

iii. Bid bonds require a surety amount of not less than five (5) percent of the total bid/proposal amount made payable to the District may be forfeited in whole or in part if the
vendor does not execute a contract and post the applicable Performance/Payment Bonds or Insurance Certificate required within

fifteen (15) working days after Notice of Award of the Contract.

iv. If any such bid bond is in an amount in excess of ten percent of the surety company's capital and surplus, the District may require, as a condition to accepting the bond, written certification that the surety company has reinsured the portion of the risk that exceeds ten percent of the surety company's capital and surplus with one or more reinsurers who are duly accredited, trusted, licensed and admitted to doing business in the State of Texas. The amount reinsured by any reinsurer may not exceed ten percent of the reinsurer's capital and surplus.

e. PERFORMANCE AND PAYMENT BONDS:

i. Are required on contracts for $25,000.00 or more.

ii. Offeror agrees that upon award of Contract, Offeror will execute and submit the required documents within fifteen (15) working days after receipt of Notice of Award. The offeror shall not commence work under this contract until the Performance and Payment Bond required under this section have been obtained and submitted to the District. The District reserves the right to automatically revoke Board Award and/or terminate the Offeror for default if the Offeror does not provide Performance and Payment Bonds within fifteen (15) working days from Board Award Date or date of execution, whichever is later.

iii. Successful Offeror shall furnish a performance and a payment bond executed by a surety acceptable to the District in an amount of 100 percent of the contract price as security for the completion of the work and for the payment of all persons performing labor and furnishing material in connection with this contract, whether or not they become part of the completed project.

iv. Performance and Payment bonds shall be executed by a surety duly authorized to do business in the State of Texas and licensed by the State of Texas to issue surety bonds. If any such bond is in an amount in excess of ten percent of the surety company's capital and surplus, the District may require, as a condition to accepting the bond, written certification that the surety company has reinsured the portion of the risk that exceeds ten percent of the surety company's capital and surplus with one or more reinsurer who are duly accredited, trusted or licensed and admitted to doing business in the State of Texas. The amount reinsured by any reinsurer may not exceed ten percent of the reinsurer's capital and surplus.

43. COMPLIANCE WITH STATUTES/CODES. Offeror's compliance with Federal, State, and Local statutes, codes, guidance, etc. is mandatory to obtain and maintain a Contract with the District. The following are a few statutes, codes, etc. that must be followed:

a. Child Support Certification. Texas Family Code Section 231.006 (Child Support Certification) states, in part, that "(a) A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to (1) receive payments from state funds under a contract to provide property, materials, or services; or (2) receive a state-funded grant or loan." The offeror certifies that the individual or business entity named in responding to this solicitation or Contract or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated, and payment may be withheld if this certification is inaccurate. The vendor hereby acknowledges that this statement is true, correct, and accurate.

b. Clean Air and Water Act. The offeror represents it is in compliance with all applicable standards, orders, or regulations 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, as required under 0MB Circular A-102, Attachment 0, Paragraph 14(1) regarding reporting violations to the grantor agency and the United States Environmental Protection Agency, Assistant Administrator for the Enforcement.

c. "No Boycott of Israel". For contracts with companies that have more than 10 full-time employees and when the contract is for more than $100,000, Offeror certifies that it (and any of its affiliates or parent company), does not, and will not, boycott Israel during the term of any contractual arrangement with Garland ISD. For purposes of any contractual arrangement with Garland ISD, "boycott Israel" means 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 specifically with Israel, or with a person or entity doing business in Israel or an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

d. "Prohibition of Contracts Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations". The offeror certifies that it is not a company identified by the Texas Comptroller as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

e. "Transactions with an Abortion Provider or Affiliate". In accordance with Texas Senate Bill 22, codified in Texas Government Code Chapter 2273, and effective September 1, 2019, Offerer certifies that it is not an abortion provider, nor an affiliate of such provider as noted in Senate Bill 22. Violation or non-compliance of this statute by Offerer will result in the Agreement and/or taxpayer resource transaction being voidable by Garland ISD and Offerer agrees to defend and indemnify Garland ISD against any action brought by the Office of the Attorney General for a violation of Texas Government Code, Section 2272.004.

f. Compliance with Applicable Laws and District Policies. Vendor shall comply with any and all federal, state, and local laws, and District policies affecting the services covered by this Agreement. Such laws may include but are not limited to the following: a) Family Educational Rights and Privacy Act (FERPA); b) Protection of Pupil Rights Amendment (PPRA); and/or Health Insurance Portability and Accountability Act of 1996 (HIPAA). District policies may be obtained at https://pol.tasb.org/PolicyOnline?key=364.

44. OWNERSHIP AND USE OF DOCUMENTS.

a. All documents and materials particular to the Work prepared by Vendor or Vendor's subcontractors ("Work Material"), are the property of the District and for its exclusive use and re-use at any time without further compensation and without any restrictions.

b. Except for such Work Material which is intended to be made public as part of the Project, Vendor shall treat all such Work Material as confidential, and Vendor shall neither use any such Work Material or copies thereof on other work nor disclose such material or information to any other party without District's prior written approval.

45. DEFAULT AND TERMINATION.

a. In the event of substantial failure by a party hereunder to perform in accordance with the terms herein, the other party may terminate this Agreement upon fifteen (15) days written notice of termination set forth the nature of the failure, provided that said failure is through no fault of the terminating party. The termination shall not be effective if the failure is fully cured prior to the end of the fifteen (15) day period.

b. District may, without cause, terminate this Agreement at any time upon giving seven (7) days advance written notice to the Vendor. Upon termination pursuant to this paragraph, the Vendor shall be entitled to payment of such amount as shall compensate the Vendor for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided the Vendor shall have delivered to District such statements, accounts, reports and other materials as required by clause (d) below, and provided that Vendor shall have delivered to District all reports, documents and other materials prepared by Vendor prior to termination. The district shall not be required to reimburse the Vendor for any services performed or expenses incurred after the date of the termination notice.

c. As of the date of termination of this Agreement, Vendor shall furnish to District all statements, accounts, reports, and other materials as are required hereunder or as have been prepared by Vendor in connection with its responsibilities hereunder. The district shall have the right to use the ideas and designs therein contained for the completion of the work hereunder or otherwise. In the event of termination of this Agreement or upon completion of the work hereunder, the District may, at all times, retain the originals of all such materials. All such materials are the property of the District. They are not to be used by any person other than the District on other projects unless expressly authorized by the District.

d. If Vendor fails to cure any default hereunder within fifteen (15) days after receiving written notice of such default, District shall be entitled, but shall not be obligated, to cure any such default and shall have the right to offset against all amounts due to Vendor hereunder, any and all reasonable expenses incurred in connection with such curative actions.

46. STUDENT CONFIDENTIALITY. The vendor acknowledges that the District has a legal obligation to maintain the confidentiality and privacy of student records in accordance with applicable law and regulations, specifically the Family Educational Rights and Privacy Act (FERPA). The vendor is receiving student information in compliance with the requirements and exceptions outlined in FERPA. The vendor acknowledges that it must comply with said law and regulations and safeguard student information. The vendor may not re-disclose the information to a third party without prior written consent from the parent or eligible student. The vendor must destroy any student information received from the District when no longer needed for the purposes listed in the Agreement. If the Vendor will receive data from the District, the Vendor will be required to sign the District's Data Sharing Agreement.

This document contains personal information from a student's education records. It is protected by the Family Educational Rights and Privacy Act (20 U.S.C. section 1232g) and may not be re-released without the prior written consent of the parent or eligible student.

Suspension of the Work for the Convenience of the District.

District may, without cause, order the Vendor in writing to suspend, delay or interrupt the Work in whole or in part for such time period as District may determine. The vendor shall be compensated for all services actually performed prior to receipt of written notice from the District of such suspension, delay, or interruption, together with any reimbursable expenses then due. If the Work is resumed after being suspended, delayed, or interrupted for more than three months, the Vendor's compensation may be equitably adjusted if, in the District's reasonable opinion, such adjustment is warranted. No adjustment shall be made to the extent that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Vendor is responsible.

Certain Bids and Contracts Prohibited.

By signing this Agreement, the undersigned certifies as follows: "Under Section 2155.004, Texas Government Code, the Vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate."

Loss of Funding and Commitment of Current Revenue.

Termination of the Agreement under this paragraph is to be considered Termination for Non- Appropriation of Funds. The district shall have the continuing right to terminate this Agreement at the end of each fiscal year or end of the special revenue fund or grant during the term of the Agreement with regard to any services to be performed after the end of such fiscal year or end of the special revenue fund or grant, without District incurring any liability to Vendor as a result of such termination, including early termination charges. If District terminates this Agreement pursuant to this paragraph, the Vendor will have the right to collect and retain payment for services rendered to District through the termination date but shall not be entitled to any early termination charges.

Captions.
The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Appointment.
District hereby expressly reserves the right from time to time to designate by notice to Vendor a representative to act partially or wholly for District in connection with the performance of District's obligations hereunder. The vendor shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

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

Nondiscriminatory Employment.
In connection with the execution of this Agreement, the Vendor shall fully comply with the District's non-discrimination requirement cited below.

The District prohibits discrimination, including harassment, against any student or employee. Discrimination is defined as treating a student, group of students, or employee differently from similarly situated individuals on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law and provides equal access to the Boy Scouts of America and other designated youth groups.

Additionally, the District does not discriminate on the basis of sex (including sexual orientation or gender identity), in its education programs or activities, and is required by Title IX of the Education Amendments Act of 1972 and its implementing regulations, not to discriminate in such a manner.

Submittal to the District of reasonable evidence of discrimination will be grounds for termination of the Agreement. This policy does not require the employment of unqualified persons.

Sexual harassment of employees or students of the District by Vendors employees or agents is strictly forbidden. Any employee or agent of the Vendor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Vendor, including dismissal.

47. VENDOR CONDUCT.

- **a. Sexual harassment of employees of the Vendor or employees or students of District by employees of the Vendor is strictly forbidden. Any employee of the Vendor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Vendor, including dismissal.**
- **b.** The Vendor shall be responsible to the District for acts and omissions of the Vendor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Vendor or any of its subcontractors. It is understood and agreed that the relationship of Vendor to District shall be that of an independent vendor/contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Vendor the agent, servant, or employee of the District, or (2) to create any partnership, joint venture, or other association between District and Vendor. Any direction or instruction by District or any of its authorized representatives in respect of the Work shall relate to the results the District desires to obtain from the Work and shall in no way affect Vendor's independent vendor/contractor status described herein.
- **c.** Vendor shall enforce the District 's alcohol-free, drug-free, tobacco-free, harassment-free, and weapon-free policies and zones, which will require compliance with those policies and zones by Vendor's employees, subcontractors, and all other persons carrying out the Agreement. Vendor shall require all workers, whether Vendor's own forces or the forces of Vendor's subcontractors, while on District 's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for District 's students and staff. All areas of the campus shall be off-limits to Vendor's forces unless their work assignment specifies otherwise. The vendor shall also require adequate and appropriate dress and identification of the Vendor's employees, subcontractors, and all other persons carrying out the Work. The Vendor shall further ensure that no on-site fraternization shall occur between personnel under the Vendor's and subcontractor's direct or indirect supervision and District 's students or employees and the general public. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of the District 's property and immediate removal from the site. Repeated termination of the Vendor's or Vendor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by the District.