EXHIBIT B

UPGRADE SERVICES AGREEMENT

This Consulting Services Agreement (the “Agreement”) is entered into this day of March, 2021 by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Vendor”) a Corporation with its primary place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and Garland Independent School District (Garland ISD) having its offices at 501 S. Jupiter, Garland, Texas 75042.

## Recitals

**Whereas**, Vendor has a proven history of assessing, implementing, configuring, upgrading and enhancing the Oracle E-Business (EBS) Suite, Oracle Fusion Middleware, Oracle Database, and all interrelated components of the associated technology stack;

**Whereas**, Vendor provides a diverse range of Oracle consulting services specializing in project management, functional and technical consulting services;

**Whereas**, Garland ISD seeks a Vendor to provide a muli-phased services engagement relating to (i) an ERP assessment and software upgrade; (ii) an enterprise reporting tool solution assessment, software upgrade and deployment; and (iii) an assessment and streamlining of document approval flows;

**Whereas,** the parties desire to set forth the terms and conditions pursuant to which Vendor will provide such services to Garland ISD;

**Now, Therefore,** in consideration of the premises and the mutual consideration provided herein, the sufficiency of which the parties acknowledge, the parties hereto agree as follows:

### Agreement

**Definitions**

**Conditional Acceptance:** “Conditional Acceptance” shall have the meaning described in Section 9.

**Documentation**: “Documentation” shall mean, collectively: (i) all of the written, printed, electronic, or otherwise formatted materials that relate to the Services; (ii) all user, operator, system administration, technical, support, and other manuals and all other written, printed, electronic, or other format materials that describe the functional, operational, and/or performance capabilities of the Oracle System Upgrade; and (iii) all Specifications, materials, flow charts, notes, outlines, manuscripts, writings, pictorial materials, schematics, and other documents that represent, demonstrate, or explain the Services. The Documentation described under (iii) will be customized to describe the specific configurations that will be performed by Vendor for the Services to meet Garland ISD’s business requirements.

**Oracle Upgrade**: “Oracle Upgrade” shall mean: (i) the assessment and software upgrade of Oracle E-Business Suite (EBS) Release 12.1.3 to Release 12.2.x, where “x” represents the agreed upon minor revision of Release 12.2; (ii) the assessment and software upgrade of Oracle Business Intelligence Enterprise Edition (OBIEE) solution to replace Oracle Business Intelligence (BI) Discoverer reports with OBIEE reporting solution; and (iii) the assessment and streamlining of iProcurement Requisition document approval flows, using Oracle’s Approvals Management Engine (AME).

**Final Acceptance:** “Final Acceptance” shall have the meaning described in Section 9.

Vendor Personnel: “Vendor Personnel” shall mean all members of the Vendor’s project team(s) tasked with performing the Services, as provided by the Vendor.

**Key Personnel:** “Key Personnel” shall mean the Vendor Client Manager, Vendor Project Manager, and other key project leads.

**Oracle System Upgrade**: “Oracle System Upgrade” shall mean the Oracle Upgrade as described in the Vendor’s response to RFP #2-21, Statement of Work and all Documentation, Oracle software, modifications, configurations, and any custom programming specified in the Vendor’s response to RFP #2-21 and Statement of Work, as well as all revisions and customizations to any or all of the above software that may be required.

**Phase:** A portion of the Oracle System Upgrade consisting of the Services for a given scope of work to be executed as a project. See Vendor response to RFP #2-21 and Statement of Work for a more complete description of phases.

**Productive Use:** Garland ISD’s use of the Oracle System Upgrade to accomplish the essential daily business functions of Garland ISD.

**Services**: “Services” shall mean any and all services required to deliver the Oracle System Upgrade that Vendor is engaged to perform pursuant to this Agreement, as described in Sections 1.1 and 1.2 of this Agreement, Vendor response to RFP #2-21, Statement of Work and the New Services.

**Specifications**: “Specifications” shall mean the descriptions of the Services and all other deliverables hereunder, and their components, capacities, functions and/or methods, set forth in this Agreement (including all Exhibits hereto) and the Documentation, or as otherwise provided to Garland ISD by Vendor in writing.

**Working Days:** Working Days are defined as Garland ISD Working Days.

**1.0 Consulting Services/Project**

**1.1 Agreement Documents**

This Agreement, Statement of Work, and the Vendor Response to Garland ISD RFP # 2-21 Oracle Upgrade Services constitute the entire agreement between the Parties and their order of precedence, are set forth below and are hereby incorporated herein by reference.

1. Agreement
2. Statement of Work
3. The Vendor's Response to RFP # 2-21

**1.2 Agreement to Perform Services**

As used herein, “Services” shall mean the general discovery, design, development, and deployment services as described in Vendor response to RFP #2-21 and Statement of Work. From and after the Notice‑to‑Proceed Date, Vendor agrees to perform the Services, and Garland ISD agrees to compensate Vendor for its performance of the Services, in accordance with the terms of this Agreement and the Exhibits hereto. In addition, Vendor shall perform all of its obligations with respect to the Services in accordance with the timetables, and milestones set forth in this Agreement and the Exhibits hereto. Except as explicitly set forth in this Agreement, Vendor shall furnish all labor, materials, equipment, products, tools, transportation, and supplies required to perform the Services.

The parties acknowledge that Garland ISD is purchasing Services from a Vendor pursuant to the terms of this Agreement. The parties also acknowledge that Garland ISD has entered into a license for Oracle software pursuant to the terms of a certain Software License Agreement between Garland ISD and Oracle, (the “Software License Agreement”) which shall govern Garland ISD’s rights, and Software Vendor’s obligations, with respect to the Oracle software. For purposes of this Agreement, and except as set forth in this Agreement, Software Vendor is not included in the definition of “Vendor” and Vendor assumes no liability for Software Vendor’s performance, or lack of performance of Software Vendor, under the Software License Agreement. Nothing herein shall prevent Garland ISD from pursuing all of its rights and remedies against Software Vendor under the Software License Agreement, including the withholding of the payment of any fees or amounts otherwise payable by Garland ISD pursuant to the terms of the Software License Agreement. As part of the Services, Vendor will provide to Garland ISD all of the functionality required by Garland ISD in the Vendor response to RFP #2-21 and Statement of Work.

If requested by Garland ISD in writing and agreed to by Vendor, with such agreement not to be unreasonably withheld, the parties may substitute the Deliverables, Services, or tasks that are described in the Vendor’s response to RFP #2-21 and Statement of Work for new Deliverables, Services, or tasks that are reasonably and substantially equivalent to those Deliverables, Services, or tasks being substituted and any such substitution shall not result in any adjustment to the Fees, unless otherwise mutually agreed by the parties.

**1.3 Change Orders**

If Garland ISD requires the performance of Services (other than New Services) that are not then being performed, or requires a change to the existing Services, Garland ISD’s Project Manager shall deliver to the Vendor’s Project Manager a Change Order specifying the proposed work with sufficient detail to enable Vendor to evaluate it. Vendor, within five (5) Working Days, or longer as may be mutually agreed between the parties, following the date of receipt of such Change Order, shall provide Garland ISD with an evaluation of the Change Order and a written proposal containing the following: a detailed description of the Vendor Personnel required to perform the requested Services; Specifications (if applicable); upgrade plans, with implementation to commence not later than thirty (30) calendar days after approval thereof, unless otherwise mutually agreed; the timeframe for performance; acceptance criteria; and for New Services, the estimated price for such performance based on the applicable charges set forth in this Agreement. At its option, Garland ISD may request, and Vendor shall provide, a fixed-fee estimate for such change to the Services. Garland ISD may also issue change orders that reduce the scope of the project. Upon receiving a change order for a reduction in scope, Vendor shall deliver to Garland ISD’s Project Manager, within 5 Working Days after receiving the change order, an assessment of the reduction on the overall project and a revised maximum price which reflects the reduced work effort. All Change Orders shall be governed by the terms and conditions of this Agreement, including the hourly rates for consulting services, unless mutually agreed otherwise. Within the reasonable timeframe specified in Vendor’s proposal, which timeframe shall not be less than ten (10) Working Days from the Project Manager’s receipt of such Change Order (the “Response Period”), Garland ISD’s Project Manager shall approve the Change Order and forward it to the Vendor. Vendor shall not proceed without a written, authorized Change Order. Vendor shall promptly commence performing the Services described in the Change Order upon receipt of a Change Order executed by the authorized representatives of the parties. A Change Order shall not become binding upon Garland ISD, and Garland ISD shall not be obligated to pay Vendor for any Services performed unless and until an authorized, written Change Order is issued and purchase order modified prior to the work commencing.

**1.4 Location**

The Services to be performed by Vendor Personnel pursuant to this Agreement shall be performed at a location as agreed between Vendor Project Manager and Garland ISD Project Manager. The Services to be performed pursuant to any Change Order shall be performed at the location specified in the Change Order (the “Site”). If Site is not explicitly specified in the Change Order, Services shall be performed at a location as agreed between Vendor Project Manager and Garland ISD Project Manager.

**1.5 Time**

Vendor and Garland ISD accept that time is of the essence for this project. Vendor will perform the Services according to the schedule set forth in the Vendors response to RFP #2-21 and Statement of Work, including, but not limited to dates for achievement of milestones. Material delay in Vendor's performance of the Services caused directly by Vendor's acts or omissions, or the acts of third parties/subcontractors retained or chosen by Vendor, constitute a breach of this Agreement. Vendor will not be responsible for material delays caused by Garland ISD. A material delay shall be defined as any delay that requires the movement of the date for delivery of any major milestone or the date for placing software modules into production. If Garland ISD desires to change the schedule of the project or the change in schedule is caused by direct actions or inactions of the Garland ISD to complete its responsibilities as described in Vendor response to RFP #2-21 and Statement of Work, the Change Order process described in Section 1.3 will apply and may result in additional compensation for the Vendor, subject to mutual agreement between Vendor and Garland ISD.

**1.6 License and Ownership**

**A. Work Product**

All interfaces and custom code development, and all customized reports developed for Garland ISD, shall become Garland ISD’s exclusive property, along with all inventions, discoveries, deliverables, intellectual property, technical communications and records originated or prepared by Vendor pursuant to this Agreement including papers, charts, computer programs, and other documentation or improvements thereto to the extent that such materials are described in or required by the Vendor response to RFP #2-21 and Statement of Work (collectively, the “Work Product”) shall be Vendor’s or the third party supplier’s exclusive property subject to the Garland ISD’s Government Purpose Rights.

**B. Government Purpose Rights**

The Garland ISD has Government Purpose Rights to the Work Product or deliverable as delivered to the Garland ISD hereunder. Government Purpose Rights are the unlimited, irrevocable, world-wide, perpetual, royalty-free non-exclusive rights and licenses to use, modify, reproduce, perform, release, display create derivative products from and disclose the Work Product. Government Purpose Rights also include the right to release or disclose Work Product outside the Garland ISD for any government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose Work Product for any government purpose. Government Purpose rights do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

**C. Third Party Rights**

To the extent that the Work Product provided under this Agreement is in support of Garland ISD's licensed software programs provided by third parties or Vendor under one or more software license agreements, the applicable software license agreement shall govern Garland ISD’s use of supplemental software included in the Work Product provided hereunder.

**1.7 Project Plan**

* + 1. The Vendor will deliver to Garland ISD, no later than 20 Work Days after the commencement of activities (formal project start), a project plan that describes the Phases, milestones, deliverables, and detailed project tasks, resources, and dates for completion of Services.
    2. The Oracle System Upgrade and Services, as further described in Phases of Vendor response to RFP #2-21 and Statement of Work, will be placed into Productive Use according to the agreed upon production go-live dates for each Phase. In the event Vendor fails to deliver any of the deliverables described in A or B above, in full compliance with the provisions of this Section and the Vendor response to RFP #2-21 and Statement of Work by the time period specified in this section, and such failure is the direct result of Vendor’s actions or inactions, the parties agree that, Garland ISD may elect by written notice to Vendor either (a) to seek any and all available remedies under this Agreement; or (b) require Vendor to pay to Garland ISD liquidated damages in an amount equal to one-thousand dollars ($1,000) per day for a maximum of 30 calendar days or until Vendor delivers deliverable in question in full compliance with Vendor response to RFP #2-21 and Statement of Work, which amounts may be set off by Garland ISD against amounts owed to Vendor pursuant to the terms of Section 2.1 hereof. Vendor and Garland ISD agree that liquidated damages in the amount of $1,000 per day constitutes liquidated damages for a sum that is difficult to otherwise ascertain.  Vendor and Garland ISD further agree the amount of One Thousand Dollars ($1,000) per day is reasonable and it is not a penalty. If Garland ISD makes the election under subsection (b) above, the amounts paid and payable shall be Garland ISD’s exclusive remedy, to the exclusion of any other legal and equitable remedies to which Garland ISD may otherwise be entitled due to Vendor’s failure to deliver the Project Plan. Notwithstanding the foregoing, if Garland ISD makes the election under subsection (b), for a period of four (4) calendar months after Vendor’s receipt of Garland ISD’s written notice thereof, Garland ISD, by written notice to Vendor, may elect to rescind such election, at Garland ISD’s sole discretion. In the event that Garland ISD elects to rescind such election after Garland ISD has received the amounts referenced hereof to which Garland ISD would otherwise be entitled under this Section, Garland ISD shall promptly refund such amounts to Vendor.

**1.8** **Deliverable Quality**

If Garland ISD rejects, in accordance with the Acceptance Procedures described in this Agreement, any deliverable two (2) times for reasons relating to failure of the Vendor to deliver such deliverable in conformance with the criteria specified for that deliverable in the Vendors response to RFP #2-21 and Statement of Work. Vendor, at no additional cost to Garland ISD and at Garland ISD’s option, shall provide to Garland ISD such additional Vendor Personnel as may be required or necessary to achieve such deliverable in accordance with the applicable criteria set forth in the Vendors response to RFP #2-21 and Statement of Work.

**1.9 New Services**

The Garland ISD will have the right to purchase future services from the vendor at a rate that is fixed at the negotiated hourly rate in this contract for one year beyond the contract end date. The blended, hourly rate for any Service provided by Vendor for the purposes for the foregoing sentence is $<TBD> per hour for the first twelve months of this agreement. For the subsequent six months, this hourly rate shall be $<TBD> per hour.

**2.0 Compensation**

In consideration for the Services performed by Vendor pursuant to any Change Order, Garland ISD shall pay Vendor the following:

**2.1 Price**

The Services will be charged to Garland ISD on not to exceed, basis subject to the maximum cost, which includes travel and all reimbursable expenses, of $<TBD>. As used in this Section 2, “not-to-exceed” means that Vendor will perform its obligations under this Agreement even if it is required to expend more than the number of hours used to determine the cost set forth in Statement of Work and will not charge Garland ISD for such excess hours or expenses unless otherwise permitted under this Agreement. In no event will the cost to Garland ISD of the Services exceed cost as set forth in Statement of Work unless agreed upon in advance in writing signed by authorized representatives of both parties through the Change Order process outlined in Section 1.3 of this Agreement. The Parties agree that the not-to-exceed character of this Agreement applies to total cost in each phase and not to individual deliverables. Services to be provided by Vendor under any duly authorized Change Orders that increase the cost will be provided at rates as set forth in Section 1.9. If material changes in the timing of the Services to be provided by Vendor are agreed upon in a Change Order, the parties will also amend the payment schedule set forth in Statement of Work to reflect the change in the timing of the Services.

**2.2 Payment**

Vendor will invoice Garland ISD on a milestone/deliverable basis but not more than monthly, meaning invoices will be sent to Garland ISD upon mutual agreement upon the completion of specified milestones/deliverables as per the acceptance procedure specified in the section 9 of this document. The milestones/deliverables subject to payment and their associated payments are set forth in Statement of Work attached hereto. Staff of the Vendor and its authorized subcontractors will commit the work effort, at the authorized work Location, needed to complete the deliverable, in accordance with Vendor’s obligations in the Vendor’s response to RFP #2-21 and Statement of Work. Each invoice will include information reasonably needed by Garland ISD to evaluate the payment request, including invoice number, matching purchase order number, time period, milestones covered, and actual work effort expended. Reconciliation of work effort will be undertaken at the end of each phase. The Garland ISD will pay invoiced amounts that are not the subject of a good faith dispute within 30 days of receiving a correct and proper invoice, so long as Vendor remains in compliance with the terms of this contract including the Vendor’s obligation to provide on-site project staffing, as described in the Vendors response to RFP #2-21 and Statement of Work. Any payment disputes will be resolved via the dispute resolution process described in Section 10.

The Garland ISD will not be billed or be liable for any charges other than those described and authorized in this Agreement. The Garland ISD will only pay for Services actually performed and for reasonable expenses actually incurred. Documentation of expense items will be made available to Garland ISD upon request and consistent with the Vendor’s reimbursement policy.

##### 3.0 Term and Termination

**3.1 Termination by Garland ISD**

Notwithstanding any other provision of this Agreement, Garland ISD may terminate this Agreement for any reason it determines, in its sole discretion that such termination is in its best interest. In such event, Garland ISD shall provide written notice to Vendor that termination is effective 30 calendar days following the notice. Upon notice, Garland ISD shall pay vendor all undisputed amounts for deliverables completed and approved by Garland ISD and actual expenses incurred up until the time of termination, and Vendor shall continue to work at Garland ISD premises for up to 30 calendar days, at the Garland ISD’s sole option, from the date of the termination notice, at the previously agreed hourly rates. In addition, Garland ISD will pay to vendor mutually agreed upon and reasonable disengagement costs (e.g., cancellation costs of apartment leases limited to the equivalent of two months of rent and not-to-exceed the per diem rate allowed the Vendor personnel, non-refundable airline tickets). Vendor will provide complete documentation for all agreed-upon disengagement costs.

**3.2 Termination by Vendor**

Vendor may immediately terminate this Agreement, by giving written notice of termination to Garland ISD, only upon the occurrence of any of the following events:

i. Garland ISD fails to pay to Vendor, in accordance with the local government prompt payment act and Vendor makes written demand therefore through the invoice process, any past-due amount payable under this Agreement that is not the subject of a good faith dispute.

ii. Garland ISD breaches any of its material obligations under this Agreement and does not cure the breach within thirty (30) calendar days (or such other time period, not less than thirty (30) calendar days, as may be reasonable) after Vendor gives written notice to Garland ISD describing the breach in reasonable detail.

iii. Garland ISD dissolves or liquidates or otherwise discontinues substantially all of its business operations.

* 1. **Effect of Termination**

Termination of this Agreement and/or any Change Order shall not limit either party from pursuing any other remedies available to it, including injunctive relief. The parties' rights and obligations under indemnity, warranties, confidentiality and limitation of liabilities shall survive termination of this Agreement and/or any Change Order.

* 1. **Disentanglement**

In connection with any expiration or termination of the Term of this Agreement or of the provision of any of the Services provided hereunder, Vendor shall take all actions necessary to accomplish a complete and timely transition from Vendor to Garland ISD, or to any replacement providers (collectively, the “New Vendor” or “NV”) designated by Garland ISD, of the Services being terminated (a “disentanglement”), without material impact on the Services or any other services provided by third parties. Vendor shall cooperate with Garland ISD and the NV and otherwise take all steps reasonably required to assist Garland ISD in effecting a complete and timely Disentanglement. Vendor shall provide Garland ISD and the NV with all information regarding the Services or as it otherwise needed for Disentanglement, subject to NV agreeing to maintain the confidentiality of Vendor Confidential Information. Vendor shall provide for the prompt and orderly conclusion of all work, as Garland ISD may direct, including completion or partial completion of projects, documentation of work in process and other measure to assure an orderly transition to Garland ISD or Garland ISD’s NV. Vendor shall provide any additional Disentanglement services as Garland ISD reasonably requests for a period of up to one (1) year, on a time and materials basis, at the previously agreed hourly rates for each Vendor Personnel that is reasonably required to perform such Disentanglement services as requested by Garland ISD.

**3.5 Surviving Sections.**

The following sections will survive termination of this Agreement: 4.1, 7.0, 8.0, 10.0, and 12.11.

**4.0 Confidentiality.**

**4.1 Confidential Information and Trade Secrets.**

The parties acknowledge that in the course of Vendor's performance of the Services under this Agreement or any Change Order, they each may be exposed to or acquire information which is proprietary to or confidential to the other party. Any and all information of one party in any form obtained by the other party or its employees, agents or representatives in the performance of this Agreement or any Change Order shall be deemed to be confidential and proprietary information of such party if that information is identified in writing as confidential and proprietary. The parties agree to hold such information in strict confidence to the extent permitted by law and not to copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose such information to third parties or to use such information for any purposes whatsoever, without the express written permission of the other party, and to advise each of their employees, agents and representatives of their obligations to keep such information confidential. All such confidential and proprietary information described herein and any deliverable provided hereunder, in whatever form, are hereinafter collectively referred to as “Confidential Information.” The recipient of Confidential Information shall advise the owner or provider of such Confidential Information in the event that the recipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement, and will reasonably cooperate in seeking injunctive relief against any such person, provided, however, nothing in this Section 4.1 shall be construed or applied in a manner that would cause Garland ISD to be in violation of the Tex. Govt. Code §552.305 thereto.

**4.2 Non-Confidential Information.**

Notwithstanding the obligations set forth in section 4.1, the confidentiality obligations of Vendor and Garland ISD shall not extend to information that:

i. Is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than receiving party;

ii. Was known to the receiving party as of the time of its disclosure;

iii. Is independently developed by the receiving party;

iv. Is subsequently learned from a third party not under a confidentiality obligation to the providing party; or

v. Is required to be disclosed pursuant to court order or government authority, whereupon the receiving party shall provide notice to the other party prior to such disclosure.

**4.3 Non-Disclosure and Compliance with FERPA.**

The Vendor agrees that Garland ISD student information and information of Garland ISD personnel is, for purposes of the Agreement, confidential information and Vendor agrees that such information shall not be disclosed to any third party or to any employee of Vendor, except employees who are assigned to work on the Garland ISD project who have a need to be exposed to such information as part of the providing of services to Garland ISD.  In addition, Vendor agrees that Vendor and its employees assigned to perform or provide services under this Agreement, will comply with and abide by all requirements of the Family Educational Rights and Privacy Act (20 USC 1232g) and regulations thereof.

**5.0 Independent Contractor**

**5.1 General**

The Vendor is an independent contractor and no employee or agent of the Vendor shall be deemed for any reason to be an employee or agent of Garland ISD.

* 1. **Taxes**

The Garland ISD is exempt from paying Federal and State taxes.

**5.3 Covenants Not to Hire**

Neither party shall, directly or through one or more subsidiaries or other controlled entities, actively recruit any programmer, trainer, or member of a data processing, Garland ISD support or implementation team of the other at any time when such person is employed or engaged by such party or during the twelve (12) months after such employment or engagement ends. This provision will remain in effect during the term of this Agreement and for a period of one (1) year after expiration or termination of this Agreement.

**6.0 Insurance**

Without limiting any of the obligations or liabilities of the Vendor, the Vendor shall secure and maintain at its own cost and expense through the duration of this Agreement until the work is complete and accepted by Garland ISD, insurance of such types and in such amounts as may be necessary to protect it and the interest of Garland ISD against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by Garland ISD. Regardless of such approval, it shall be the responsibility of the Vendor to maintain adequate insurance coverage at all times during the term of the Agreement.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies shall be filed with Garland ISD within ten (10) calendar days after the date this Agreement is entered into. All insurance policies shall provide thirty (30) calendar days written notice to be given by the insurance company in question prior to modification or cancellation of such insurance. Such notice shall be mailed, certified mail, return receipt requested, to Risk Manager, Garland Independent School District, 414 Stadium Drive, Garland, Texas.

The minimum coverage for insurance referred to herein shall be in accordance with the requirements established within the Garland ISD Request for Proposal.

**7.0 Indemnification; Hold Harmless**

INFRINGEMENT: VENDOR SHALL DEFEND AND HOLD HARMLESS GARLAND ISD AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM ANY CLAIM OR PROCEEDINGS BROUGHT AGAINST GARLAND ISD AND FROM ANY COST DAMAGES AND EXPENSES WHICH ARISE AS A RESULT OF ANY CLAIM THAT IS BASED ON AN ASSERTION THAT GARLAND ISD’S USE OF THE WORK PRODUCTS UNDER THIS AGREEMENT CONSTITUTES AN INFRINGEMENT OF ANY UNITED STATES OR FOREIGN PATENT, COPYRIGHT OR TRADEMARK PROVIDED THAT GARLAND ISD NOTIFIES VENDOR PROMPTLY OF ANY SUCH CLAIM OR PROCEEDING AND GIVES VENDOR FULL AND COMPLETE AUTHORITY, INFORMATION AND ASSISTANCE TO DEFEND SUCH CLAIM OR PROCEEDING AND FURTHER PROVIDED THAT VENDOR SHALL HAVE SOLE CONTROL OF THE DEFENSE OF ANY CLAIM OR PROCEEDING AND ALL NEGOTIATIONS FOR ITS COMPROMISE OR SETTLEMENT PROVIDED THAT VENDOR SHALL CONSULT WITH GARLAND ISD REGARDING SUCH DEFENSE. IN THE EVENT THAT THE WORK PRODUCTS ARE FINALLY HELD TO BE INFRINGING AND ITS USE BY GARLAND ISD IS ENJOINED, VENDOR SHALL, AT ITS ELECTION; (1) PROCURE FOR GARLAND ISD THE RIGHT TO CONTINUE USE OF THE WORK PRODUCTS; (2) MODIFY OR REPLACE THE WORK PRODUCTS SO THAT IT BECOMES NON- INFRINGING; OR (3) IF PROCUREMENT OF THE RIGHT TO USE OR MODIFICATION OR REPLACEMENT CAN NOT BE COMPLETED BY VENDOR, REFUND TO GARLAND ISD ONE TIMES THE FEES PAID FOR THE WORK PRODUCT. IF GARLAND ISD MODIFIED THE WORK PRODUCTS IN ANY MANNER WITHOUT THE PRIOR WRITTEN CONSENT OF VENDOR AND SUCH MODIFICATION IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE A CONTRIBUTING CAUSE OF THE INFRINGEMENT, GARLAND ISD WILL SHARE PROPORTIONATELY IN THE COST OF THE DEFENSE AND DAMAGES. IN THE EVENT VENDOR UPDATES THE WORK PRODUCTS AND GARLAND ISD DOES NOT HAVE A CURRENT MAINTENANCE AGREEMENT WITH VENDOR, VENDOR SHALL PROVIDE THE MODIFIED WORK PRODUCTS TO GARLAND ISD AT NO CHARGE. VENDOR SHALL HAVE NO LIABILITY HEREUNDER IF THE INFRINGEMENT WOULD HAVE BEEN AVOIDED BY GARLAND ISD’S USE OF EITHER I) THE MOST CURRENT REVISION OF THE WORK PRODUCTS OR II) THE MODIFIED WORK PRODUCTS. THE FOREGOING STATES VENDOR’S ENTIRE LIABILITY AND GARLAND ISD’S EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT, PATENT, TRADEMARK, OR ANY PROPERTY INTEREST RIGHTS BY THE WORK PRODUCTS, ANY PART THEREOF, OR USE THEREOF.

INJURY, PROPERTY, OR OTHER DAMAGE: VENDOR SHALL INDEMNIFY, DEFEND, AT ITS EXPENSE, AND HOLD HARMLESS THE GARLAND ISD FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, JUDGMENTS, AWARDS, LIABILITIES, LOSSES, DAMAGES, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS’ FEES, ARISING OUT OF OR RELATING TO BODILY INJURY OR DEATH OF ANY PERSON, OR TO DAMAGE TO TANGIBLE PERSONAL OR REAL PROPERTY, ARISING OUT OF OR RELATING TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF VENDOR, ITS OFFICERS, AGENTS AND EMPLOYEES IN THEIR PERFORMANCE UNDER THIS AGREEMENT, UNLESS SUCH INJURY IS CAUSED BY THE SOLE NEGLIGENCE OR CONCURRENT ACTIVE NEGLIGENCE OF THE GARLAND ISD, ITS OFFICERS, EMPLOYEES, OR AGENTS. IF VENDOR’S NEGLIGENCE COMBINES WITH THE GARLAND ISD’S ACTIVE NEGLIGENCE TO CAUSE INJURY, THE PARTIES AGREE THAT LIABILITY WILL BE APPORTIONED AS DETERMINED BY A COURT OF COMPETENT JURISDICTION.

THIRD- PARTY SERVICES: VENDOR SHALL INDEMNIFY AND DEFEND, AT ITS EXPENSE, AND HOLD THE GARLAND ISD HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, JUDGMENTS, AWARDS, LIABILITIES, LOSSES, DAMAGES, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS’ FEES, BASED ON ALLEGATIONS, OF NON- PAYMENT, FROM VENDOR’S SUBCONTRACTORS ARISING OUT OF OR RELATED TO SERVICES PERFORMED OR PRODUCTS PROVIDED BY THEM HEREUNDER.

TECHNOLOGY: VENDOR SHALL INDEMNIFY, DEFEND, AND HOLD THE GARLAND ISD HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, JUDGMENTS, AWARDS, LIABILITIES, LOSSES, DAMAGES, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS’ FEES, ARISING OUT OF VENDOR’S FAILURE TO OBSERVE AND FOLLOW ANY WRITTEN REQUIREMENTS OR SPECIFICATIONS ISSUED BY MANUFACTURERS, VENDORS, OR LESSORS OF EQUIPMENT, SOFTWARE, AND OTHER PRODUCTS FURNISHED BY GARLAND ISD FOR USE BY VENDOR UNDER THIS AGREEMENT; PROVIDED HOWEVER THAT (I) GARLAND ISD SHALL BE RESPONSIBLE FOR OBTAINING ANY CONSENTS REQUIRED OR NECESSARY FOR VENDOR TO USE SUCH EQUIPMENT, SOFTWARE OR OTHER PRODUCTS PROVIDED BY GARLAND ISD; AND (II) UNLESS SUCH REQUIREMENTS OR SPECIFICATIONS ARE ALREADY IN VENDOR’S POSSESSION, GARLAND ISD SHALL PROVIDE VENDOR WITH WRITTEN COPIES THEREOF.

**8.0 Warranties, Remedies and Limitation of Liability**

**8.1 General Performance**

Vendor represents and warrants that the Services and all other deliverables furnished hereunder by Vendor will: (i) meet the acceptance or completion criteria as set forth in Vendor response to RFP #2-21, the Project Plan, and/or the Change Order, (ii) be free from all material defects; and (iii) perform in accordance with the requirements set forth in Vendor response to RFP #2-21 and Statement of Work; and (iv) with respect to any modifications, customizations or changes made to the Oracle System Upgrade by Vendor as part of the Services, perform in accordance with the technical, functional or other requirements set forth in, or as otherwise delivered in accordance with Vendor response to RFP #2-21 and Statement of Work and any Change Order for a period of twelve (12) months following initiation of Productive Use by Garland ISD.

**8.2 System Functionality Warranty**

Vendor represents and warrants that all Vendor-provided and/or recommended third-party hardware and/or software, including the Oracle software and all components thereof, (i) is compatible and will operate with one another and with Garland ISD’s hardware, software, and network environment as exists at final Phase “Go-Live” production date, as long as such environment meets or exceeds the standards substantially described in Vendor response to RFP #2-21, (ii) shall function properly and in accordance with the applicable specifications separately and as a fully integrated system, and (iii) when operated together will not cause any material delays, defects, or problems with the Oracle System Upgrade, subject to any capacity constraints of Garland ISD’s current communications network environment. In addition, Vendor warrants that the modifications, if required, to the Oracle Software performed by Vendor hereunder will not detract from or otherwise interfere with the full functionality of the Oracle System Upgrade as described in the specifications and Vendor response to RFP #2-21 and Statement of Work hereto, except as may be otherwise contemplated in such specifications or Vendor response to RFP #2-21 and Statement of Work. Vendor also warrants that any modifications required to the Oracle software or the source code to deliver functionality that is identified in Vendor response to RFP #2-21 and Statement of Work as “fully provided out of the box” will migrate to the next major version upgrade undertaken by Garland ISD without further enhancements or costs to Garland ISD:

If the warranty claim is caused by an underlying Oracle software defect (i.e., “bug”) or otherwise is not the result of Vendor work efforts or connected to Vendor services, as mutually agreed upon by Vendor and Garland ISD, then Garland ISD shall compensate Vendor for work performed at Garland ISD premises to remedy said defect at the prevailing hourly rate under this Agreement. Vendor shall make a good faith effort to work with the Oracle software vendor to resolve any software defects on behalf of Garland ISD.

Garland ISD’s remedy with respect to a violation of the foregoing warranty shall be as follows:

1. Vendor shall reply to a notification of warranty violation within five (5) business days of receiving that notification. To the extent practicable, Vendor shall supply a problem identification and resolution plan for the warranty violation after consulting with the Garland ISD and attempting to ascertain the cause of the purported warranty issue within five business days of receiving notification. Vendor will dedicate resources to work with the Garland ISD to promptly resolve the warranty issue with the intent to resolve the warranty issue within five business days after submitting the problem identification and resolution plan. Vendor will satisfactorily resolve the warranty issue within no more than 30 calendar days after being notified of warranty violation, unless said violation is preventing the Garland ISD from the using the system (a “Critical Violation”), in which case, Vendor shall satisfactorily resolve the Critical Violation as soon a practical, but in no event will such satisfactory resolution be delivered more than 10 calendar days after being notified of warranty violation.
2. If Vendor cannot fix the Critical Violation within 10 calendar days after being notified of warranty violation, Vendor shall provide the Garland ISD with a plan to fix the Critical Violation, including a time estimate for the fix, and shall continue to make its best efforts to fix the Critical Violation. If, after making all reasonable efforts, but in no event longer than 30 calendar days, Vendor is unable to satisfactorily re-perform the services then Vendor will refund the Garland ISD the value of the functionality that is rendered inoperable by the Critical Violation.

**8.3 Disclaimer**

Except as expressly set forth in this Agreement and the Vendors response to RFP #2-21 and Statement of Work, Vendor expressly disclaims any and all warranties concerning the Services to be rendered hereunder or under any future Change Order, whether express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose.

**8.4 Limitation of liability**

NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA, REVENUE, USE OR LOST PROFITS, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, HOWEVER ARISING, WHETHER IN CONTRACT OR TORT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S liability for damages under this Agreement shall in Any event EXCEED One Times (1) the TOTAL amount OF FEES paiD BY GARLAND ISD to Vendor.

**9.0 Acceptance of Oracle System Upgrade Deliverables**

**9.1 Conditional Acceptance of Oracle System Upgrade Deliverables**

Upon Vendor’s notification to Garland ISD that Vendor has completed the installation of any one or more components of the Oracle System Upgrade (“Software Components”) and that such Software Components are ready for testing, Garland ISD shall begin testing such Software Components in a non-production environment using the test procedures and standards contained in the Project Plan, or such other standards as are mutually agreed upon in writing (“Acceptance Test Procedures”), to determine whether each Software Component meets in all material respects, the applicable Specifications and acceptance criteria set forth in the Agreement, Vendor response to RFP #2-21, Statement of Work, the Project Plan, or such other criteria as are mutually agreed upon in writing (“Acceptance Testing”). After Garland ISD has completed the Acceptance Testing for a Software Component and has operated such Software Component in accordance with the Specifications, Garland ISD shall notify Vendor in writing that “Conditional Acceptance” of such Software Component (or the entire Oracle System Upgrade, as the case may be) has occurred. If Garland ISD determines that a Software Component, or the Oracle System Upgrade as a whole, does not perform as provided for in this Agreement, Garland ISD shall deliver to Vendor a report describing the discrepancies. Vendor shall correct the errors or defects within five (5) Working Days after receiving such report, unless extenuating circumstances outside of Vendor’s control prevent doing so, in which case the Vendor shall have the length of time mutually agreed upon in writing to correct the error, and Garland ISD may retest the Software Components and the Oracle System Upgrade for an additional test period of up to ten (10) Working Days, at the end of which the process described above in this Section 9.0. shall be repeated. Vendor will use all reasonable efforts to fix any errors or defects as soon as is practical. This procedure shall continue until Conditional Acceptance of the Software Components, or Final Acceptance of the Oracle System Upgrade, as the case may be.

**9.2 Final Acceptance of Oracle System Upgrade Deliverables**

Once Conditional Acceptance of each of the components of the Oracle System Upgrade has occurred, Garland ISD shall begin using the Oracle System Upgrade in a production environment. Once Garland ISD has used the Oracle System Upgrade in a production environment for a sufficient time to test all functions of the Oracle System Upgrade in an integrated environment (“Live Testing”), which period of time for Live Testing shall be no more than forty-five (45) consecutive calendar days after the Go-Live Date (as described in Vendor response to RFP #2-21 and Statement of Work), and has determined that: (i) there have been no material errors, (ii) the Oracle System Upgrade performs as warranted in this Agreement, and (iii) all training services required hereunder, and other services described in Vendor response to RFP #2-21 and Statement of Work, have been completed, then Garland ISD shall notify Vendor in writing of its “Final Acceptance” of the Oracle System Upgrade. In no event shall any other action or inaction by Garland ISD, including Garland ISD’s use of the Oracle System Upgrade, or any portion thereof, in a live, operational environment, constitute “Final Acceptance” of any portion of the Oracle System Upgrade. Notwithstanding anything to the contrary contained herein, in no event shall Final Acceptance be deemed a waiver of any right or remedy available to Garland ISD under this Agreement, at law, or in equity as a result of any defect in a component or deliverable not discovered by Garland ISD during the Pre-Live Testing or Live Testing periods.

**9.3 Acceptance of Non-Oracle System Upgrade Deliverables**

All services performed by Vendor under the terms of this Agreement shall be at and under the direction of Garland ISD per the guidelines set forth in the Vendors response to RFP #2-21 and Statement of Work.

The Garland ISD will review, approve and provide written sign-off for all non-Oracle System Upgrade project deliverables (e.g., reports, plans, documents) in the following way:

Vendor Project Manager will review “drafts” of each deliverable with Garland ISD Project Manager and Module Lead as appropriate prior to formal submittal of each deliverable.

Garland ISD will identify in writing any required changes, deficiencies, and/or additions necessary within 10 Working Days of receipt of each draft deliverable. A period greater than 10 Working Days will be allowed upon mutual agreement of both parties.

Vendor will revise each deliverable based on feedback from Garland ISD and submit a final version of the deliverable for review and sign-off from Garland ISD Project Manager. The Garland ISD Project Manager will identify in writing any required changes, deficiencies, and/or additions necessary within 5 Working Days of receipt of the final version of each deliverable. A period greater than 5 Working Days will be allowed upon mutual agreement of both parties.

Upon acceptance of the final deliverable, Garland ISD Project Manager will sign a Deliverable Acceptance form and shall return it to the Vendor Project Manager. For final deliverables that are rejected by Garland ISD, Vendor must re-perform the services and resubmit the deliverable for review in accordance with the procedures outlined in this section (including the 5 Working Day review period).

If a dispute arises through this process, it shall be resolved pursuant to the dispute resolution provision in Section 10.

Notification of the lack of action on the acceptance of a deliverable (no signed acceptance or no notification of required changes, deficiencies, and/or additions) will be reported in writing to Garland ISD Project Manager by the Vendor Project Manager at the end of the review period following delivery. The period may then be extended for two Working Days at Garland ISD Project Manager’s request. In the event that the Vendor Project Manager does not receive written comments or a signed Deliverable Acceptance form within the extended period, the deliverable will be considered accepted.

**9.4 Test Criteria**

Unless otherwise specifically provided in Vendor response to RFP #2-21, Statement of Work or the Project Plan, the test for each Software Component of the Oracle System Upgrade shall include testing to the Garland ISD’s reasonable satisfaction in the following regards: (a) Unit Testing (i.e., individual testing of each software component, field, screen, screen‑related action, report, and/or module/program); (b) System Integration Testing (i.e., testing of the Oracle System Upgrade as a whole and its integration with other software components and/or District systems); and (c) User Acceptance Testing (i.e., end-user testing of critical business processes and validation of business objectives) (d) Volume/Stress Testing (i.e., testing of the Oracle System Upgrade under peak conditions to measure response time and Oracle System Upgrade reaction to load).

**10.0 Dispute Resolution**

**10.1 Internal/External Dispute Resolution**

In the event of any dispute or disagreement between the parties which does not require immediate legal relief, whether with respect to interpretation of any provision of the Agreement, or with respect to the performance of either party hereto, each of the parties will have their respective project managers meet for the purpose of endeavoring to resolve such disputes. If a resolution to such dispute does not occur during such meeting, or within three (3) business days thereafter, the parties agree that the dispute will be submitted to the Project Steering Committee. If a resolution to such dispute does not occur during a meeting of the Project Steering Committee or within three (3) business days thereafter, the parties agree to submit the dispute to the President level of Vendor and to the Superintendent of Garland ISD. If either of the representatives at this level concludes, after a good faith attempt to resolve the dispute, that an amicable resolution through continued negotiations of the matter at issue does not appear likely, the parties may agree to try in good faith to settle the dispute by mediation. Both parties, in good faith, shall cooperate together to select a mediator to conduct the mediation. No formal proceedings for judicial resolution of a dispute, except one that is determined by either party to need immediate medical relief at the discretion of either party shall begin until the dispute resolution procedure is completed.

10.2 No Termination or Suspension of Services

Notwithstanding anything to the contrary contained herein, and even if any dispute arises between the parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Vendor interrupt or suspend or terminate the provision of Services to Garland ISD or perform any action that prevents, impedes, or reduces in any way the provision of Services or Garland ISD’s ability to conduct its activities, unless: (i) authority to do so is granted by Garland ISD or conferred by a court of competent jurisdiction; or (ii) the Term of this Agreement has been terminated; or (iii) or Garland ISD has failed to pay Vendor undisputed invoices that are past due in excess of ten (10) Working Days after receiving notice from Vendor of such delinquency. In the event that Garland ISD fails to make such full payment within said 10 Working Day period, Vendor shall grant to Garland ISD an additional 10 Working Days to render full payment provided that Garland ISD requests such additional 10 Working Days.

**11.0 Project Personnel**

**11.1 Project Manager**

Vendor represents that Vendor’s initial Project Manager, and any replacement Project Manager, shall be an experienced manager who shall be knowledgeable as to Garland ISD’s activities related to the Oracle System Upgrade and shall direct the efforts in fulfilling Vendor’s obligations under this Agreement. The Garland ISD shall have the right to interview Vendor’s initial Project Manager and any replacement Project Manager, and Vendor shall not designate any Project Manager without Garland ISD’s prior written consent. Vendor shall not reassign its initial Project Manager during the term of the agreement without Garland ISD’s prior written consent, or any permitted replacement Project Manager during the period beginning on the date such individual commences performing the Services hereunder, to other functions if doing so would require the alteration or reduction of such individual’s contribution to, or involvement with, the Services. Should Vendor be obligated to replace the Project Manager in the course of this agreement, the Vendor’s temporary replacement (as temporary replacements are further described in Section 11.2) shall be, at Garland ISD’s sole option, or a mutually acceptable substitute.

**11.2 Key Personnel**

The Garland ISD shall have the right to interview the initial Key Personnel and any replacement Key Personnel, and Vendor shall not designate any Key Personnel without Garland ISD’s prior written consent. Vendor shall not reassign any individual designated as Key Personnel without Garland ISD’s prior written consent during the period beginning on the date such individual commences performing the Services hereunder, to other functions if doing so would require the alteration or reduction of such individual’s contribution to, or involvement with, the Services. Vendor shall obtain Garland ISD’s prior written consent 14 (fourteen) calendar days, or such shorter time as agreed by the parties, in advance of any assignment of any Key Personnel resulting in the alteration or reduction of time expended by such individual in performance of Vendor’s duties under this Agreement, which consent may be withheld in Garland ISD’s sole discretion. In the event any one of the Key Personnel is reassigned, becomes incapacitated, or ceases to be employed by Vendor and therefore becomes unable to perform the functions or responsibilities assigned to him or her, Vendor shall (i) within ten (10) business days, replace such person with another person properly qualified to perform the functions of such replaced person, and (ii) within one (1) month, permanently replace such replaced person with another person approved by Garland ISD and properly qualified to perform the functions of such replaced person.

**11.3 Qualified Personnel**

Vendor agrees that each Vendor Personnel performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement and as specified by Garland ISD from time to time. For each Vendor Personnel, to the extent permitted by, and in accordance with, applicable law, Vendor shall conduct routine reference checks (e.g., work experience), verification of education and technical training, and background checks (e.g. felony and misdemeanor conviction check), and any other checks required by law. Vendor agrees that each Vendor Personnel will be properly trained to perform the Services and is oriented with respect to the policies and procedures of Garland ISD. The Garland ISD shall not be required to pay any fees relating to any Vendor Personnel prior to such time as the training and orientation with respect to such Vendor Personnel is completed and such Vendor Personnel commences performing the Services hereunder.

**11.4 Minimum Proficiency Levels**

Vendor Personnel, including Key Personnel, shall have experience, training, and expertise at least equal to prevalent industry standards applicable to such personnel for their responsibilities in the business in which Vendor is engaged and shall have sufficient knowledge of the relevant aspects of the Services and Garland ISD’s practices and areas of expertise to enable them to properly perform the duties and responsibilities assigned to them in connection with the Agreement. In the event of a breach by Vendor of its obligations in respect of the minimum proficiency levels of Vendor Personnel, Vendor shall promptly take one or the other (as reasonably directed by Garland ISD) of the following actions: (i) remove and replace any Vendor Personnel after receipt of notice from Garland ISD that such Vendor Personnel does not meet the required minimum proficiency levels; or (ii) take appropriate action in respect of any such Vendor Personnel, including, but not limited to, training to bring such Vendor Personnel’s proficiency levels in line with such required minimums.

**11.5 Replacement of Personnel**

The Garland ISD, on a reasonable basis, shall have the right to require the removal and replacement of any Vendor Personnel, including Key Personnel, at any time during the Term. The Garland ISD shall notify Vendor in writing in the event Garland ISD requires such action. Vendor shall accomplish any such removal within fourteen (14) calendar days after receipt of notice from Garland ISD and shall promptly replace such person with another person, acceptable to Garland ISD, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement.

**11.6 Subcontracting for Work or Services**

No contract will be made by Vendor with any third party for furnishing any of the Services to be furnished by Vendor under this Agreement without the prior written approval of Garland ISD. Vendor will be responsible for its obligations under this Agreement regardless of whether the obligations are performed by Vendor, its subcontractors, third parties, or agents on its behalf, and each of Vendor’s subcontractors, third parties, and/or agents will be subject to the same obligations and rights as Vendor under this Agreement.

**11.7 Status Reports**

During the Term of this Agreement, but not less than once a week, the Vendor shall deliver to Garland ISD’s Project Sponsor and Project Manager a “status report” summarizing the progress of the Services during the preceding week, including problems that have occurred and could delay Vendor’s performance of anticipated activities and expected problems during the upcoming month. At a minimum, the status report shall include: (i) the current status of progress under Vendor response to RFP #2-21; (ii) all actual delays; (iii) all anticipated delays; and (iv) such other information as Garland ISD may reasonably request from time to time. The Garland ISD shall have the right to assume that Vendor does not know of any problems, difficulties, or issues that may have an adverse impact on the applicable Services (whether from a timing, cost, or performance standpoint) unless Vendor specifically identifies such problems, difficulties, or issues in its written status reports.

**12.0 General Provisions**

**12.1 Notices**

Any notice required or permitted to be given to a party under this Agreement or any future Change Order shall be given in writing by personal delivery or by mail addressed to the other party at the address which is set forth under the signature blocks of this Agreement or to such other address as may be substituted by notice to the other party. All notices shall be effective upon the date of receipt.

**12.2 No Third Party Beneficiaries**

The provisions of this Agreement and all future Change Orders are for the sole benefit of the parties, and not for the benefit of any other persons or legal entities.

**12.3 Severability**

If any part or parts of this Agreement or any future Change Order are held invalid, the remaining parts of this Agreement or the applicable future Change Order will continue to be valid and enforceable.

**12.4 Venue and Jurisdiction**

This Agreement shall be governed by and construed according to the laws of the State of Texas, venue Dallas County.

**12.5 Headings**

The headings in this Agreement are for reference purposes only and shall not affect the meaning or construction of the terms of this Agreement.

**12.6 Entire Agreement**

This Agreement as described in Section 1.1 contains the complete and exclusive understanding of the parties with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions hereof will be binding unless in writing and signed by a duly authorized representative of the party to be bound. Neither the course of conduct between the parties nor trade usage will act to modify or alter the provisions of this Agreement.

**12. 7. Authority to Contract**

A. Affirmation of Legal Authority. Vendor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Vendor's governing body, authorizing the signing of this contract, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Vendor to act in connection with the application and to provide such additional information as may be required.

**12.8. Personnel**

A. Qualified Personnel. Vendor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any other contractual relationship with Garland ISD.

B. Minimum Wages. Vendor will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

C. Employee Conflict of Interest. Vendor shall establish safeguards to prohibit its employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

**12.9. Prohibition of Conflicts of Interest**

A. Interest of Public Officials and Others. No officer or employee of Garland ISD, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this contract which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of Garland ISD or any member of its governing body or other public official have any interest, direct or indirect, in this contract or the proceeds thereof.

B. Interest of Vendor. Vendor covenants that it currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract.

C. Notice to Bidders. Requests for proposal or invitations for bid issued by Vendor to implement this contract will provide notice to prospective bidders that Garland ISD's conflict of interest provision is applicable in that contractors who develop or draft specifications, requirements, statements of work and/or RFP's for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

**12.10. Records, Reports and Inspection**

A. Availability of Records. Vendor agrees to make any and all of its records, books, papers, documents and data available to Garland ISD, or the authorized representative of a State agency with statutory oversight authority, for the purpose of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies and transcriptions at any time during the terms of this contract and for a three (3) year period following final payment under the terms of this contract.

B. Vendor’s Purchasing Procedure. Vendor certifies that it does not practice any form of discrimination based on race, ethnic origin, gender or religion or disability in its purchasing procedures. Vendor agrees to make available a written description of its purchasing procedures if requested by Garland ISD.

C. Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of Garland ISD records.

**12.11. Licenses and Permits**

Vendor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this contract. Vendor shall notify Garland ISD immediately if any required license, permit, bond or insurance is canceled, suspended or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by Garland ISD, in its discretion.

**12.12 Assignment**

Neither this contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

**12.13. Compliance with Applicable Laws, Service Standards and Required Procedures**

A. Service Standards and Procedures. Vendor shall perform the services set forth in this contract in compliance with applicable standards and procedures specified herein which cover the specific purpose, goals and objectives of this Agreement.

B. Compliance With Law. Vendor shall comply with all applicable local, state and federal laws and regulations, in carrying out this contract, regardless of whether those legal requirements are specifically referenced in this Agreement.

C. Pursuant to Texas Government Code Chapter 2252, Company certifies that it is not a company identified on the on a list prepared and maintained pursuant to Texas Government Code § 806.051, 807.051, or 2252.153 (“Foreign Terrorist Organization List”). In the event that Company is added to a Foreign Terrorist Organization List at any time during this Agreement, Company shall promptly provide notice to School. Garland ISD may terminate this Agreement immediately upon receipt and verification of information, by any means, that Company has been added to a Foreign Terrorist Organization List.

D. Pursuant to Texas Government Code, Chapter 2270, as amended, if Contractor is a for- profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is  $100,000 or more,   the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. **Note**: On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of the above clause in any state contract.  Texas Government Code, Chapter 2270 has been amended since the date of the injunction and the requirement of the statute is included above in its amended form. As the statute may not cure the entire breadth of issues addressed by injunction, the Owner does not intend to seek enforcement of this this statute until further order of this or higher court having jurisdiction over the issue.

E. Pursuant to Texas Government Code Chapter 2272, the District is prohibited from contracting with any abortion provider or an affiliate of an abortion provider whereby the provider or affiliate receives something of value derived from state or local tax revenue. Any contract entered into by the District is void if the prospective vendor has such a prohibited affiliation or contractual relationship. By signing this agreement you are certifying to the District that you do not have such an affiliation or contractual relationship.

**12.14. Availability of Funds**

Each payment obligation of Garland ISD is contingent upon the availability of government funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated or available for the continuance of the function performed by any Vendor product or service, the products or services directly or indirectly involved in the performance of such function may be terminated by Garland ISD at the end of the period for which funds are available. The Garland ISD shall notify Vendor, at the earliest possible time, of any products or services that will or may be affected by a shortage of funds. No penalty shall accrue to Garland ISD in the event this provision is exercised, and Garland ISD shall not be obligated or liable for any future payments of any kind with respect to such terminated products or services or for any damages or costs incurred by Vendor as a result of termination under this Section.

**12.15 Agreement and Delegation**

The services to be performed under the Agreement resulting from this RFP are deemed personal in nature and the parties agree the duties may not be delegated nor the Agreement assigned without prior written consent of the Garland ISD and the Vendor.

**12.16 Amendments**

The parties agree that no changes, additions, or modifications to the Agreement resulting from this RFP may be made except in written addendum signed by both parties.

**12.17. Waiver**

Failure to require performance of any provision or waiver of a breach of a provision does not waive a party’s right to subsequently require full and proper performance of that provision.

**12.18. Invalid Provisions**

In the event that any one or more of the provisions contained in this Request For Proposal (or resulting purchase order) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provisions shall not affect any other provision hereof, and this Request For Proposal (or any resulting purchase order) shall be construed as if the invalid, illegal or unenforceable provision(s) had never been contained herein.

**12.19. Notification.**

Notifications required pursuant to this contract shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

For Garland ISD

Dr. Brent Ringo Mark Booker

Chief Financial Officer and Executive Director of Purchasing

501 S. Jupiter 501 S. Jupiter

Garland, Texas 75042 Garland, Texas 75042

For Vendor

IN WITNESS WHEREOF, each of Vendor and Garland ISD has caused this Agreement to be duly executed and delivered, all as of the day and year first above written.

Garland Independent School District

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

Attest

By Dr. Brent Ringo, Chief Financial Officer

Vendor

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: