

TCC Service Agreement / Interlocal Agreement to ESC 18

Purpose:

Continue service of Texas Computer Cooperative Student Information Systems for the 2021-22 school year.

Background Information:

This system provides access for central office and campus staff, teachers using the Teacher Portal for gradebook and parents accessing Parent Portal for their students' grades, attendance and assignments. For the 2021-22 school year, TCC will move from iTCCS to Ascender.

Cost:

\$376,195.80

Funding source:

Local funds

Recommended Service Provider:

ESC 18



February 9, 2021

Dr. Scott Muri, Superintendent
Ector Co ISD
P. O. Box 3912
Odessa, TX 79760-3912

Dear Dr. Muri:

Attached are the Information Systems Commitment, TCC Software Agreement, and Interlocal Agreement for Ector Co ISD to Region 18 ESC for the 2021-2022 school year. Ector Co ISD's iTCCS/ASENDER and OnDataSuite software fee is based upon the enrollment in the district on the PEIMS Fall "as of" date.

Please sign and return the attached commitment, TCC Software Agreement, and Interlocal Agreement by April 30, 2021. Region 18 will invoice Ector Co ISD next fall. If the 2021-2022 purchase order numbers are available, please indicate so on the commitment. Please feel free to alter the commitment before September 1. If you have questions, contact me at (432) 567-3280 or e-mail address ndunnam@esc18.net.

Sincerely yours,

A handwritten signature in blue ink that reads "Nancy Dunnam".

Nancy Dunnam
Deputy Director-Information Systems and Technology

Enclosure

Cc: Heather Potts
Mackenzie Weather

**Letter of Intent to Contract for Information Systems Services
2021-2022**

To:

Nancy Dunnam, Deputy Director-Information Systems
Region 18 Education Service Center
P. O. Box 60580
Midland, TX 79711-0580

District:

Ector Co ISD
P. O. Box 3912
Odessa, TX 79760-3912

**ASCENDER Web-Based Student Information System
(Requested by Heather Potts)**

Based upon district's enrollment 31881 @ \$11.80 per student = \$ 376,195.80

The fee includes Data Center Hosting and Management. The TCC Cloud Hosting provides a fully redundant design with automated disaster recovery failover to two additional Texas locations and is SSAE-16 SOC2 Type-2 certified. The protected network provides hourly database backups in addition to remotely replicated data every hour.

\$ 376,195.80

Accepted: 2021-2022 Purchase Order Number (invoiced after 9/1) _____

Dr. Scott Muri, Superintendent

Date

**OnDataSuite
(Requested by Mackenzie Weather)**

Based upon district's enrollment 31881 @ \$.55 per student = \$ 17,534.55

\$ 17,534.55

Accepted: 2021-2022 Purchase Order Number (invoiced after 9/1) _____

Dr. Scott Muri, Superintendent

Date



Request for Approval of TCC Service Agreement / Interlocal Agreement to ESC18

Texas Computer Cooperative Service Agreement/Interlocal Agreement to ESC 18

ECISD will be migrating to the Ascender software system for student applications. This system provides access for central office and campus staff, teachers using the Teacher Portal for gradebook and parents accessing Parent Portal for their students' grades, attendance and assignments.

The attached interlocal agreement ensures continued service of this software for the 2021-22 school year.

Administrative Recommendation:

Approval of the Texas Computer Cooperative Service Agreement/Interlocal Agreement to ESC 18

**Interlocal Agreement
Texas Computer Cooperative
TxEIS/ASENDER**

TERM:

The term of this agreement will be from September 1, 2021 to August 31, 2022.

PURPOSE:

The purpose of the Texas Computer Cooperative is to provide comprehensive data processing services to school districts. This includes, but is not limited to providing technical consulting services and software related to business and student accounting software applications for school districts.

FEE:

The fee for each participating district is to be negotiated by the superintendent or his designee depending upon the level of participation in the Texas Computer Cooperative and shall be paid to Region 18 Education Service Center.

RESPONSIBILITIES:

The Region 18 Texas Computer Cooperative Management Board, (Region 18 Superintendent's Advisory Committee), is responsible for the following:

- approving an appropriate fee structure
- committing resources in support of the operational requirements of the Texas Computer Cooperative
- evaluating the services provided
- appointing district contacts to participate in Texas Computer Cooperative user meetings
- recommending system enhancements

The Region 18 Education Service Center is responsible for the following:

- managing the Texas Computer Cooperative and ensuring that all software is functioning properly
- hiring appropriately trained staff
- providing training and technical assistance for Texas Computer Cooperative contacts

The participating school district is responsible for the following:

- providing a signed Interlocal Agreement to Region 18 Education Service Center
- providing the appropriate fee to Region 18 Education Service Center
- informing Region 18 Education Service Center of any problems regarding Texas Computer Cooperative software, service, or staff

Superintendent or Designee's Signature _____ Date _____

Please return to: Nancy Dunnam, Deputy Director-Information Systems
Region 18 Education Service Center
P. O. Box 60580
Midland, TX 79711-0580
ndunnam@esc18.net

TEXAS COMPUTER COOPERATIVE SOFTWARE AND APPLICATION SERVICES AGREEMENT

This Software and Application Services Agreement ("**Agreement**") is entered into as of the Effective Date between the Education Service Center shown on the Commitment, a member of Texas Computer Cooperative, (referred to in this Agreement by the pronouns we, our, or us) and the school or other entity as reflected on the Commitment (referred to in this Agreement by the pronouns you and your). This Agreement shall be applicable for the dates as provided in the Commitment. Throughout this Agreement, references to either you or us includes the respective employees, officers, agents and any others acting on behalf of either you or us.

1. DEFINITIONS¹

1.1 "Derivative Works" means a modification of an existing work protected by a copyright in our favor, but excluding any School Data (as defined below) or reports that are created by you using the Software.

1.2 "Documentation" means the guides and manuals for use of the Software in the form provided by us and generally available to users of the Software.

1.3 "Commitment" means the commitment describing particular modules, programs, databases, Documentation, hosting services or other services that are from time to time a part of this Agreement. Each Commitment is deemed a part of this Agreement.

1.4 "Server" means the host-processing computer hardware servers that are customized, installed, managed, maintained and supported to provide the services under this Agreement.

1.5 "Software" means (i) the particular computer software and applications specified in the Commitment (wherever hosted), and (ii) any other Server software used by us to provide the Services; in any case in object code form; the media upon which such Software resides; and the Documentation, Upgrades, Updates, and Derivative Works thereof, if any.

1.6 "System" means the respective computer programs, databases, and related Documentation and includes future modifications and enhancements of it, generally, and those modifications and enhancements provided specifically for your benefit. The System does not include additional databases or other modules that are not licensed under this Agreement, which we may make available for use to you for additional fees under a Commitment.

1.7 "Third Party Technology" means those portions of a System consisting of software and databases not owned by us but which are incorporated into the System under licenses held by us.

1.8 "Update" means a subsequent release of the Software containing minor corrections, bug fixes, and other minor modifications that are generally made available for the Software without additional charge. Updates will not include any release, option or future product that is priced separately.

1.9 "Upgrade" means a modification which provides new or substantially improved features, functionality, or performance for the Software, or which includes a significant number of modifications to previous releases of the Software. We may price Upgrades separately, but we will consult with you prior to making them available to you if there is a separate charge.

1.10 "User" means any individual (including your staff, teachers, customers, suppliers, vendors, and other such external or third parties necessary to effect your business purposes for which the Software is provided) authorized by you to access the Software under the terms of this

¹ We have placed these definitions at the beginning of the Agreement for purposes of convenience. There are additional defined terms in **bold print** at various points within this Agreement.

Agreement, regardless of whether the individual is actively using the Software at any given time, as may be further specified in the Commitment. You shall be solely responsible for all activities of a User while accessing the Software and for all your security relating to accessing the Software, including, without limitation, issuing passwords, terminating passwords, and verifying the status of Users.

2. EQUIPMENT AND SYSTEMS

2.1 Network Equipment. You will provide and maintain the necessary network and equipment to be used on your premises to access the Software and we will do the same for our equipment. Each party will retain exclusive and complete ownership of their respective network and equipment.

2.2 Systems Security. To the extent that you are given access to our computer system(s), hardware, software, or other equipment (collectively, "Systems") in connection with performance of the Services, you will comply with any Systems security policies (as may be revised from time to time) and will not tamper with, compromise, or circumvent any security or audit measures employed for our Systems. You will exercise reasonable care in using the Systems, not surrender possession of the Systems to any third party, use the Systems solely to perform the applicable Services, return the Systems to us upon request, and you assume all risk of use of the Systems. To the extent allowed by law, you shall indemnify and hold us harmless from and against the loss of or any damage to the Systems while being used by you.

3. SERVICES AND OWNERSHIP

3.1 Services. Subject to the terms and conditions of this Agreement, we will provide you the following services (collectively the "Services"):

(a) We will provide you with services associated with and necessary for the implementation of the Software; and, to the extent necessary, remote access to Servers on which your

School Data is hosted (as may be provided in a Commitment).

(b) We will provide you with access to certain Software including Third Party Technology and customer support services for the Software, as may be described in the Commitment.

(c) We will provide you with consulting services associated with the on-going integration and operation of the Software within your business processes as may be described in the Commitment.

3.2 Access. Under the terms and conditions of this Agreement and for the Term specified, we grant you a non-exclusive, non-transferable license to access and use the Software, in accordance with the associated Documentation, solely for your internal business processing operations. This right is limited to the number of authorized Users identified in any Commitment for the specified product. The foregoing license does not constitute a sale and does not convey any rights of ownership in or to the Software or our System. If any part of this license terminates, you will immediately cease use of that part of the Software or our System.

3.3 School Data. You retain all right, title and interest in and to any School data, such as School data in databases or reports, the content of which is used in connection with, or created as a by-product of, the Software by you or on your behalf hereunder ("School Data"). The term "School Data" expressly does not include any item that contains, expresses, incorporates or otherwise includes all or any portion of the Software (which portion, and only such portion, remains our property).²

3.4 Ownership. All right, title, and interest in the System, Software, Updates, Upgrades, or modifications thereof, or in any ideas, know-how, and programs developed by us during the term of the Agreement are our exclusive property. Title and ownership rights to our System, enhancements, customizations, and changes made to our System

² For School Data confidentiality, please see Section 5.2.

pursuant to this Agreement, and all copies thereof, shall at all times reside exclusively with us or our Third Party technology licensors, as may be applicable. We also retain all title, copyright and other proprietary rights in the Software and Derivative Works, including any implied rights. We expressly do not grant you any rights whatsoever in the Software source code.

4. YOUR OBLIGATIONS

4.1 Specified Obligations. You will (i) provide reasonable electronic and physical access to your network, equipment, facilities and resources, if necessary; (ii) provide reasonable space, power, and physical security on your own file servers and personal computers to support various aspects of our Software and Services, if necessary; (iii) provide such information as we may reasonably request from time to time; (iv) fulfill your obligations as specified herein and in the Commitment, as may be supplemented or modified according to the guidelines set forth and mutually agreed to by the parties hereto; and (v) act as a reference for us upon request, provided however, any on site visit or demonstration at your location must be approved in advance by you.

4.2 Restrictions. You agree that you will not: (i) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (ii) modify, adapt, create derivative works based upon, or translate the Software; (iii) resell for profit, distribute, or otherwise grant any rights in the Software to any other party, including commercial time-sharing, rental, or service bureau use; or (iv) authorize or permit anyone to access the Software other than in connection with your internal data processing operations.

5. CONFIDENTIALITY AND SECURITY

5.1 Confidential Information. Each party acknowledges that it may have access to certain confidential information of the other party ("**Confidential Information**") including the Software, School Data (including but not limited to raw data), the terms and pricing under this Agreement, and all materials or information

identified as confidential. Each party agrees, (a) it will hold the confidential Information of the other party in confidence with at least the same level of care as it uses for its own confidential information of the same nature, but not less than a reasonable level of care; (b) it will not use all or any portion of the Confidential Information for its own account or the account of any third party, except as expressly permitted by this Agreement, (c) unless required by law, it will not disclose any Confidential Information to any third party, except that party's attorneys, accountants and other advisors as reasonably necessary. The parties shall not publicize the contents of the terms and provisions of this Agreement without the express written consent of the other party.

5.2 Confidentiality of School Data.

We will treat your School Data with utmost confidentiality. Should we require access to the School Data in order to fulfill our duties under this Agreement, you will permit such access as is reasonable under the circumstances to our personnel responsible for supporting the obligations of this Agreement who are bound by duties of confidentiality no less restrictive than those contained in this Agreement. Should we be required to give access to School Data to any of our subcontractors, vendors, Software licensors, or any other third party in order to fulfill our duties under this Agreement, you will permit such access, provided however, such third party must agree in writing to maintain the confidentiality of School Data no less stringently than as required by this Agreement. We shall have the limited right to combine the unidentified raw data with that of other users of the System into an anonymous aggregated database, provided however, that such data would not include names or other indices of identification. If necessary, the parties will execute an appropriate confidentiality and non-disclosure agreement in compliance with privacy laws and to protect School Data.

5.3 Exceptions. Information shared between us and you will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party from a source other than one having an obligation of confidentiality to the disclosing party;

(ii) becomes known to the receiving party directly or indirectly from a source that does not have an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The foregoing exceptions shall not apply to School Data.

S.4 Return of Confidential Information. Within thirty (30) days after expiration or termination of this Agreement each party agrees to return or destroy all Confidential Information of the other party in its possession at the time of expiration or termination and will not make or retain any copies of such Confidential Information, except as required to comply with any applicable legal or accounting record keeping requirement. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials. Upon your written request at the expiration or termination of this Agreement, we will deliver to you at your expense, your School Data held by us pursuant to this Agreement in the form in which it is held by us. If you fail to provide a written request for this information within twenty (20) days after expiration or cancellation of this Agreement, we may destroy any of your information remaining in our System. You also agree to return any of our Software or equipment that is located within your premises or under your control within thirty (30) days after expiration or cancellation of this Agreement.

S.5 Access to Services by Third Parties. If it becomes necessary for third-parties to access the software and/or Services provided under this Agreement and prior to allowing access, you must obtain a fully executed copy of the confidentiality and non-disclosure agreement located online at www.txeis.net. By accessing the software and/or service, any such third-parties act as your representative and are bound by the terms of this Agreement.

6. FEES AND BILLING

6.1 Payment. You will pay all fees set forth in or pursuant to the Commitment. Except as

otherwise provided herein, any and all fees are nonrefundable. Any challenge to a fee paid or claim for a refund must be brought within twelve (12) months of the date such fee was initially paid.

6.2 Invoices. Unless otherwise specified in any Commitment, we will normally invoice you annually for the Services. All invoices are due and payable in full within thirty (30) days of receipt of the invoice. Any increase or other adjustment in fees due to any circumstance or event set forth in the Commitment will be reflected in subsequent invoices.

6.3 Invoice Disputes. If you dispute any amount payable in any invoice rendered hereunder, you will notify us in writing by the invoice due date of the specific basis for the dispute and nevertheless pay when due the amount not in dispute under such invoice. Representatives of the parties shall then promptly proceed to attempt to address and resolve such dispute within thirty (30) days of the invoice due date. If the representatives of the parties cannot resolve the dispute within such thirty (30) days of the invoice due date, the dispute will be escalated upward in each party's management structure, which representatives shall attempt to address and resolve the dispute within sixty (60) days of the invoice due date. If the management representatives cannot resolve the dispute within such sixty (60) days of the invoice due date, the issue will then be subject to resolution in accordance with the dispute resolution provision in this Agreement.

6.4 Taxes. You are responsible for all taxes and charges of any kind imposed by any federal, state, or local governmental entity owed as a result of this Agreement, excluding only taxes based solely upon our income. When we have the legal obligation to pay or collect such taxes, the appropriate amount will be invoiced to and paid by you, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority.

7. REPRESENTATIONS, WARRANTIES AND REMEDIES

7.1 Representations. Each party represents that it has the full right and authority to enter into this Agreement and we warrant that we have the full right and authority to grant you the rights to the Software as granted herein.

7.2 Limited Warranty. We warrant that during the term of this Agreement:

(a) We own the Software or are otherwise authorized to grant the license to you.

(b) The Software will reasonably perform in accordance with the published product specifications in effect from time to time.

(c) The Documentation produced by us, including manuals and training materials, is reasonably accurate and correct in all material respects as of the date distributed to you.

(d) School Data stored in our data center will not be accessed by any third party without your express written authorization; however, you are solely responsible for any unauthorized access due to your acts, omissions, or negligence.

(e) Your access to or use of the Software will not violate or infringe the patent, copyright, registered trademark, or trade secret right of any third party.

(l) The Services shall be performed in a professional and workmanlike manner in accordance with applicable professional standards and consistent with industry practices.

7.3 We will correct any material nonconformance to the most current version of the Software at no additional cost to you. You will notify us of such nonconformance in reasonable detail, if possible, to allow us to duplicate and correct the nonconformity.

7.4 No Third Party Warranties. SOFTWARE OR SERVICES COVERED UNDER

THIS AGREEMENT MAY CONTAIN OR BE DERIVED FROM THIRD PARTY TECHNOLOGY OR SOFTWARE PROVIDED TO US BY CERTAIN THIRD PARTIES. YOU ACKNOWLEDGE THAT YOU ARE NOT ENTITLED TO ANY WARRANTIES FROM ANY THIRD PARTY, THAT THE WARRANTIES PROVIDED BY US EXPRESSLY STATED ABOVE ARE THE SOLE WARRANTIES GOVERNING THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT YOUR SOLE REMEDY FOR ANY ALLEGED BREACH OF WARRANTY WILL BE AGAINST US.³

7.5 Warranty Disclaimers and Exclusions. EXCEPT FOR THE EXPRESS WARRANTIES SET OUT IN THIS SECTION 7, WE DO NOT MAKE ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. We do not warrant:

(i) That the operation of the System will be error free in all circumstances, nor

(ii) That all defects in the System that are not material with respect to the functionality thereof as set forth in the Documentation will be corrected, nor

(iii) That the operation of the System will not be interrupted for short periods of time.

8. LIMITATIONS OF LIABILITY

8.1 Limitation. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, PRODUCTIVITY, DATA OR USE, WHETHER IN CONTRACT OR TORT, EVEN IF THE OTHER

³ We may be contractually obligated to make this disclaimer on behalf of certain third party technology providers.

PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing will not apply to your breach of payment obligations under this Agreement.

8.2 Maximum Liability. Except for our obligations under Section 9 (Indemnification for infringement), our maximum aggregate liability to you under this Agreement shall not exceed the total amount paid by you to us for the Software and Services provided under this Agreement. Each of the remedy limitations in this Agreement is to be enforced to the maximum extent permitted by applicable law and independently of any other applicable remedy limitation, even if any particular remedy is held to have failed its essential purpose.

9. INDEMNIFICATION

9.1 Infringement Indemnification. To the extent allowed by law and consistent with Sections 8 and 9.2 below and for any allegation that the Software or Services in and of themselves infringe any third party trade secret, copyright, patent, or registered trademark, we will indemnify, defend and hold you harmless from and against any and all actual or alleged costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "**Losses**") resulting from any claim, suit, action, or proceeding (each, an "**Action**") brought against you, except that we will not indemnify, defend, or hold you harmless with respect to any such right owned or asserted by you.

9.2 Conditions of Indemnification. The indemnification obligation set forth in Section 9.1 is expressly conditioned upon {1) you notifying us in writing upon receiving notice of such Action; (2) our having sole control of the defense and all related settlement negotiations; and (3) you providing us with the assistance, information and authority necessary to perform our obligations under this Section. We will reimburse you for reasonable out-of-pocket expenses incurred by you in providing such assistance. We agree not to settle or compromise any claim in a manner that requires you to assume liability or pay money without your express written consent.

9.3 Mitigation Rights. If the Software is held, or is reasonably believed by us, to infringe the intellectual property rights of a third party (the "**Claim**"), we will have the option, in our sole discretion and at our sole expense, to provide the following as your sole and exclusive remedy: (a) modify the Software to be non-infringing; (b) obtain for you a license to continue using the Software, or (c) if neither of the foregoing is reasonably possible terminate the license to use the Software and return a portion of any one time license fees you paid under this Agreement.

10. TERM AND TERMINATION

10.1 Term. The term of this Agreement shall commence on the Effective Date and continue through the Term as reflected in the Commitment.

10.2 Termination for Cause. Either party may terminate this Agreement if: (i) the other party breaches any material term or condition of this Agreement and fails to cure such breach within sixty (60) days after receipt of written notice of the same; except in the case of failure to pay fees, which must be cured by you within thirty (30) days after receipt of written notice of delinquency from us; or (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors if such petition or proceeding is not dismissed within sixty (60) days of filing.

10.3 Effect of Termination. Upon the expiration or effective date of termination of this Agreement for any reason, we will cease providing the Software and Services to you. Termination of this Agreement will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve your obligation to pay all fees that are owed under this Agreement.

11. MISCELLANEOUS

11.1 Migration. During the Term of this Agreement and any renewal or extension, we may design and put into production a new version of

the System or applications that are intended to replace the version of the System or applications covered by this Agreement. In such event, we may choose to move you to the new version of the Software and reserve the right to terminate maintenance and support of the earlier version of the System or applications. If so, we agree to:

- (a) give you six (6) months notice regarding the availability of the new version of the System or applications;
- (b) enable you to preview the new version of the System or applications;
- (c) provide you with a written migration proposal; and
- (d) negotiate with you the terms under which you may move to the new System or applications, including changes in fees, if any.

If you and we agree on terms for a migration plan, we will notify you in writing at least one hundred twenty (120) days before we discontinue maintenance and support of the current version of the System and applications. If we and you do not agree on terms for migration, we agree to refund to you any prepaid and unearned **fees** on a pro-rata basis.

11.2 Survival. The provisions of this Agreement which by their nature would continue beyond termination or expiration of this Agreement shall survive such termination or expiration.

11.3 Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including, without limitation, acts of God, earthquake, flood, war, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses reasonable efforts to promptly correct such failure or delay in performance. If the interruption exceeds thirty (30) days, either party may terminate this Agreement.

11.4 Governing Law and Venue. This Agreement is governed by and construed in accordance with, the laws of the State of Texas

(except that body of law controlling conflicts of law). The venue for any action under or relating to this Agreement will be in San Antonio, Bexar County, Texas.

11.5 Severability. If any provision of this Agreement is held to be unenforceable, the remaining provisions will remain in full force and effect and the illegal provision will be replaced with a legal provision that incorporates the original intent of the parties.

11.6 Waiver. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default and will not act to amend or negate the rights of the waiving party.

11.7 Assignment. Neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other party, except as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

11.8 Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, to the address of the receiving party, or at such other address as may hereafter be furnished in writing by either party to the other. Such notice will be deemed to have been given as of the date it is delivered, mailed, or sent, whichever is earlier.

11.9 Relationship of Parties. The parties agree that they are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

11.10 Dispute Resolution. Prior to the commencement of litigation, the parties will attempt in good faith to resolve any controversy promptly by negotiations between executives of the parties (if appropriate, with their respective counsel), and if such negotiations fail, by non-binding mediation (under the mediation rules of the American Arbitration Association). This provision shall not apply to claims involving confidentiality or any other claim seeking injunctive or equitable relief.

11.11 Entire Agreement; Counterparts. This Agreement, the Commitment and any exhibits thereto, and all other documents incorporated herein by reference, constitute the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

11.12 You acknowledge that we may maintain a copy of this document in electronic form and agree that a copy reproduced from such electronic form or by any other reliable means (e.g. photocopy, image or facsimile) shall in all respects be considered equivalent to an original.

("ISD")

By: _____

Title: _____

Date: _____

Education Service Center, Region 18,
a member of Texas Computer Cooperative
("TCC") By:

Name: Nancy Dunnam _____

Title: Deputy Director of Information
Systems and Technology

Date: 2//2021